

(2)

THE
ADMINISTRATION
OF THE
BRITISH COLONIES.
PART II.

BRITISH COLONIES

ADMINISTRATION

BRITISH COLONIES



THE
ADMINISTRATION
OF THE
BRITISH COLONIES.

PART THE SECOND.

WHEREIN

A LINE of GOVERNMENT between the supreme Jurisdiction of Great Britain, and the Rights of the Colonies is drawn,

AND

A PLAN of PACIFICATION is suggested.

To which is added,

A POSTSCRIPT,

BEING

REMARKS on the Pennsylvania Instructions,

AND

The "New Essay on the Constitutional Power of the Parliament over the Colonies."

WITH AN

A P P E N D I X,

CONTAINING

PAPERS referred to in both the FIRST and SECOND PARTS.

BY THOMAS POWNALL,

Late Governor, Captain General, Commander in Chief, and Vice Admiral of His Majesty's Provinces, Massachusetts-Bay and South-Carolina; and Lieutenant-Governor of New-Jersey.

Hæc Vis est istius & Juris & Verbi. UT FUNDI POPULI, beneficio nostro. non suo jure fiant. Cum aliquid Populus Romanus jussit, id si est ejusmodi, ut quibusdam Populis *sive fœderatis, sive liberis*, permittendum esse videatur, ut statuant ipsi, non de nostris, sed de suis rebus, quo jure uti velint: Tum utrum FUNDI facti sint an non, quærendum esse videatur. De nostrâ verò Republicâ, de nostro Imperio, de nostris Bellis, de Victoriâ, de Salute, Fundos Populos fieri noluerunt.

M. T. CICERO, Orat. pro Balbo. §. 8.

L O N D O N:

Printed for J. WALTER, at Homer's Head, Charing-Cross.

M.DCC.LXXIV.

THE
ADMINISTRATION
OF THE
BRITISH COLONIES.

程 氏

Letter to Editor 97

The "New Deal" on the Constitutional Power of the President



X I

Parking referred to in both letters had become

BY THOMAS HOWLAND

E R R A T U M.

P A R T II.

Page 77, line 6, for *empire*, read *government*.

Paste this at the back of the Title.

1. The first of the following is the title of the document.

M. T. Cresson, Ohio Ave Bldg S. E.

SEVERAL friends, who have read, and approve, the opinions and doctrine contained in the following tract, doubt whether the present be the proper time for making them public. Although they think that if the subject had been, at the first outset of this business, taken up on this ground, many difficulties which we are now entangled in, and many of the evils which seem impending over us, might have been avoided; yet—on the matter of the issue to which things are now brought—they doubt whether this, or any other reasoning which holds out *a line of* PACIFICATION, will have any effect at all, or even be read at this hour.—Whether this species of reasoning, com-

VOL. II. a ing

ing from *a Briton* at the moment when *the American* hath advanced upon us, may not tend to encourage that spirit which has already gone too far, by seeming to cast a doubt on the justice of the British cause.

Some think that *a temper of COMPROMISE* hath a betraying aspect, when it is opposed to declarations, which renounce all such temper. — Others think that it may be hazarding too much, if it is not actually hurtful, even to parly when the adversary is lying at watch, to seize every advantage that can be made even of the hopes of concessions.—

If I had not perfectly satisfied myself as to all these doubts : nay, if I had not a conviction, stronger than all prudential considerations respecting myself—that the publishing what I have here written, would have a *tendency to pacification*—I could have no motive upon earth to do it.—I feel that I shall not be approved by many of my countrymen ; and I am sure I shall be extremely
 2 disapproved

disapproved by the Americans.—Vanity can neither tempt my views, nor can interest lead my hopes *in this course*.—Under the first consideration I do confess, as I sincerely think, That neither this, nor any other *line of pacification*, will *at present* take effect, or come into practice: But if there be not some such in theory, in contemplation, that may by degrees gain upon the minds of men; our disputes must inevitably go to war, and our war (like an Indian war) to utter extirpation.

If we are to *treat*, there must be some line to which our negotiations must have reference: If we are to *fight*, there must be some line which shall bound and be the end even of our victories.

Some such line is necessary: and as I do most stedfastly believe that THE LINE OF COLONIAL GOVERNMENT which I have proposed in the following papers, is that of all others the nearest to truth, which is most likely, *in the course of events*, to be fallen
a 2 into.—

into—I cannot but think this the very proper time to publish it,

I own, that to parly, where the party doubts his own grounds, or his own spirit, is hazarding too much: But where all is right, and sure within; when such parly proceeds from that conscious feeling, it may oftentimes produce good effects, which arms and force may destroy, but not produce.

If moderation and compromise would lead to CONCESSIONS of our rights, or of that power which ought to maintain them, it becomes a seducing and a betraying spirit. Nothing can be gained, but every thing may be lost by such concessions. Yet surely explanations, defining on one hand those rights which you are determined to exert and exercise; and, on the other hand, those liberties which you do not mean to infringe or violate, but to support; at the same time that it gives a proof of your justice, marks your firmness; and is more terrible to the eye of
an

an encroaching adversary than even force itself; in the noise and tumult of which, justice and injustice may be confounded. Those alone, who have a bad cause, standing on artificial ground, may doubt that tone of truth which is in *the small still voice*: But this conduct is fit for him alone, who having justice on his side, hath, as rectitude, so an unconquerable firmness in his heart.

On the contrary, Those in America who have held the language and the doctrines, that there is no line between sovereign power (absolute in all cases whatsoever) and no power at all; that any modification of subjection is equally disloyal and disobedient, as a total renunciation of all subjection;—have driven a people, already half mad, to utter desperation, and *have given source* to all the evils which Great Britain and America must experience.

There is danger, on the other hand, in the semblance of moderation, where, when it interposes, it hath a tendency to divide.

As

As I could not but think that there was something which might have that tendency in the Pennsylvania Instructions, and in the Essay annexed to them; and as I apprehend that propositions of a similar nature may come forward with still more weight: I thought some few remarks might be useful, such as may guard us against too hasty an adoption of preliminaries, which though they may offer, and really mean peace, might, without explaining the terms and conditions on which 'tis offered, entangle us in the inextricable grounds of dissention and war.

I examine these by *a line of Colonial Government*, which none of those who are engaged in controversy, on the one side or the other, will approve: I meddle not however with controversy, “ * *Verum enim in-
venire volumus, non tanquam adversarium
aliquem convincere.*”

I wish the government of this country to define its own rights; and standing on

* Cicero, de Fin. lib. i. §. 5.

that

that sure ground, to acknowledge those of others. I wish the people of America, as they love liberty, so to honour true government, which is the only basis on which *real liberty* can stand: *and in that line to see peace.* In support of this, and to this cause, is the following tract, written in this dreadful crisis, DEDICATED.

November, 1774.

that the growth in acknowledged that
others. I will the people of America
they love liberty. It is to honor the
man, which is the only basis for
the growth of the world. It is to
peace. In support of this and to the
is the following text, written in the
the name of the American people.

November, 1974

(3)

THE
ADMINISTRATION
OF THE
COLONIES.
PART THE SECOND.

THE former part of this Book [was written at the close of the last war, and published after the establishment of the peace. It described the change which was taking place in the politicks of the European governments, from the commercial interests of their Colonies becoming so active and important a part of the system: It marked the crisis that was then coming into event; it suggested reasons, arising from the nature of that case, why the government of Great Britain should begin seriously to consider of weaving these interests into the system of its administration: It even presumed to propose measures calculated for the

VOL. II. b obtaining

obtaining to the government of Great Britain such experimental and actual knowledge of the affairs and interests of the Colonies, as might become adequate to the governing of them; as might give, at the same time, to them such assurance and confidence in, by communion with, the spirit of the government of the mother country, as should create that *consensus obedientium* which is alone the bond and tie of practical and efficient government. It considered the state of the administration of the Colonies in those points in which the government of the mother country took the supreme lead, direction, and controul over them. It examined how the supreme controuling power of the government of Great Britain, in matters which respected the union, vitality, and safety of the whole empire, had acted; what system it had established, what it should establish. The author did not, in the first editions which the book passed through, enter at all into the disquisition of the state of that relation by which these Colonies, *as external communities*, stood connected with and subordinate to the body of the Realm. —Convinced “how very unsafe a thing it “is in settled governments to argue the “reason of fundamental constitutions*,” I

* Commons Journal 1672.

studiously and conscientiously avoided all the questions, in which I could not but see this matter was involved.

As I saw an attention to American affairs arising in the minds of most men of business; I was in hopes that these points, dispassionately and deliberately considered in the true spirit of council, might be settled on the grounds of prudence, and of real government, by those who alone could really so settle them. I own I was in hopes that that true system of efficient government, founded in political liberty (which all seemed to profess *here*) might be established in the Colonies: I was sure, from the temper and genius of the people in America (as they were when I knew them) it would be nourished and maintained *there*. I have had the chagrin to find, on the contrary, that from the moment in which American affairs became an object of politicks in this island, they became the tools and instruments of parties: They have been taken up and acted in only on party-views, on party-considerations. Instead of any general plan or system of policy being applied to the governing them as parts of the whole; their particular plans have been applied to the interfering in our government, as this or that direction of their movements could be brought to add

to the momentum of this or that party *here*. Hence it is that every misconceived idea, under which the Colonists can be supposed to have emigrated, to have settled, and on which their communities can be supposed to be established, have been taken up as *principles*. Every fleeting measure which the fluctuation and variableness of government, in the empiricism of its opinions for many years past, hath caught at, has been quoted as *precedents* of the true spirit of government towards the Colonies. The constitutions and the rights of the Colonies became thus unsettled: and parliament, as well as ministers, have been balancing in opinion, what is the legal and constitutional mode of administration, by which the Colonies are to be governed: The Colonies, on the other hand, from a like spirit, have so often shifted and advanced the ground of their claim of rights, that the best reasoning of their truest friends, even the most active zeal of their warmest partizans, have fallen short in the course. Men having divided themselves into various contending interests on the matter, *the lines of their conduct have diverged into various curves of measures*, on each case, as it arose and might be made to operate in our political disputes.—To describe these in their utmost *divergings*, one may say, that one side in the ardor of those

those exertions, which they have thought necessary, have wrought themselves up to the maintaining a spirit of EXTERNAL GOVERNMENT, which goes in its consequences to *absolute despotism*. The other side, in the alarm and revulsion of their spirit against these supposed principles, have gone into a contrary extreme, in actuating a spirit of INTERNAL GOVERNMENT within their respective jurisdictions, which must *train* to *absolute sovereignty* in the Colonies, independent of the government of Great Britain. These various opinions, interwoven into the manœuvres of political efforts, came at length into actual discussion on the matter of practice. The questions which arose were no longer of curiosity and theory: they were brought into issue by deeds and overt acts. I then first proceeded, from the consideration of those principles, by the vigour of which all free communities are governed *within* themselves, to the examination and discussion of the external relation in which the Colonies, as communities of Englishmen, in *partibus exteris*, stood to the sovereign power of the kingdom of Great Britain.—I pursued this inquiry by an analysis of the circumstances under which they emigrated, and of the principles on which these communities were in fact settled.—I found them *in fact*, wherever the government of

England interposed in their settlement, or in regulating their establishment,—to be *de facto & de jure* counties palatine—I found them established on the precedent of the county palatine of Durham. I then, by an exact deduction of the procedure of the realm of England in respect to these kind of principalities, found that these were bound to perform towards the empire of England all SERVICES which arise from the duty of subordinate parts of it, to maintain the union, safety, and vitality of the whole : yet that in the case of AIDS AND SUBSIDIES, *which are of free will*, they could not, in the strict legal acceptation of their rights, be bound by the gifts and grants of the representatives of the realm not representing them*—and I produced cases wherein, when they excepted to the being thus bound, they were held excused and free therefrom.—I found however that they had in fact been bound by acts and statutes made and ordained by authority of the parliament of England : I found that imposts, customs, and port duties, *raising revenues, included in grants which the Commons of England and of Great Britain had made to the King*, were laid and imposed by those acts : I found that the King himself, *in his government* of these external

* Vide p. xxiii. of the 1st Vol. the Case of Chester.
communities,

communities, was bound by the law and statutes of the realm respecting them ; and by such as the parliament should from time to time make respecting them. Although the King alone executed both external and internal government over these colonies : yet it was in virtue of that office by which he represents the whole majesty of the empire, acting without the realm, in like manner as he does represent it in its fœderal acts and compacts with foreign states—I found the subordination of the colonies to the supreme authority of the parliament of England (afterwards of Great Britain) to stand exactly in the same predicament with the subordination of the counties palatine, and principality of Wales ; which, before they had knights and burgeses to represent them in parliament, were nevertheless bound by acts of that parliament, as far forth as the other counties of the realm were, which had knights and burgeses to represent them in that parliament. As the procedure of government, both in its reasoning and acts, towards these palatinates and principalities, went to that remedy which was the true one, both in fact and right—namely, to the admitting them to a share and participation of power and will in that parliament, by admitting their representatives into it : I applied both the doctrine and procedure of this precedent to the case of our Colonies. I endeavoured

to deduce from, and to recommend upon the matter, such a system as might tend to form and establish a *British union* of all the parts of the British dominions into a *one whole, an organized body*, animated by a free-will, extending to all. " 'Tis in their legislature (says Mr. Locke) that the members of a commonwealth are united and combined together into one coherent living body. This is *the soul* that gives form, life, and unity to the commonwealth." It was from this principle that I very seriously endeavoured to recommend an union and *organization* of all the parts of the British dominion; and the measure of permitting the Colonies (they retaining, at the same time, all the rights and franchises of their proper government, to all the purposes of internal jurisdiction) to send knights and burgesses to represent them in parliament. By which, as *this sort of government was a combination and union of the vitality and will of all the parts*, its supreme power and absolute will might extend over the whole; and yet the whole remain, in every part, morally, politically, and absolutely free. I very seriously recommended such a *British union*, as the only sure measure which would prevent the certain alternative of an *American union*, distinct from and independent of Great Britain. The true system of the British empire, as it lies

in nature, is such an union—Nature knows no such distraction and separation of interests as the practices and powers of man have introduced *. But whatever may be the nature of things, whatever may be the true grounds of reason founded thereon ; such are the systems of men in action, such their principles in reasoning, that the very attraction which naturally draws them together—creates in their spirit, when they are thus drawn together, a principle of repulsion, that is too hard for nature, truth, and right.

The first attempt which was made to establish a systematick subordination of the American Colonies under the sovereign and supreme government of Great Britain, considered these Colonies as *external communities* ; that is, as without and distinct from the community of the realm ; considered them as subjected parts, which, although they had no participation in the vitality and will of this governing community, were yet to be governed by its power. The measure by which this subordination was endeavoured to be established, considered those communities as beings which were to be governed by the vigour of principles deriving from without ; although they were com-

* Vide Mr. Grenville's letter in the Appendix, N^o. I.
munities

munities having *within* themselves a spontaneity, and moral free-will. The attempt, therefore, instead of attracting to, and uniting them in a one common center, has created a principle of repulsion, a spirit of resistance, which hath led, like another building of another tower of Babel, to the confusion of languages, and to the dispersion of the people.

I had conceived an idea of our Colonies as shoots which the old tree, in the vigour of its health had put forth. I viewed them as spreading branches of the same *organized plant*, advancing in its natural vegetation: but I found, alas, this system to be a mere vision. Our Colonies have, in practice, been considered as *cyons shot from layers*. While they drew their subsistence from the parent stock, they have been permitted to strike a separate root, *the beginning of a new and separate plant*: they have been long nurtured and brought forward in this distinct systematick organization, and have, *occulto velut arbor ævo*, grown up to a strength and magnitude which even bears some comparison with the old stem. The parent tree begins to view these shoots *as a separate plant*, and with its over-topping branches casts over them a shade rather of jealousy and mistrust, than of its old affections: the young shoot
in

in its exuberancy *feels itself as a separate plant*, and begins to find the old connecting layer as rather curbing and cramping, than as supporting its increasing vegetation. What, under this state of things, may be the proper culture for the future, is the purport of the following enquiries and disquisitions.

The British Colonies are to be considered for the future, since America as well as Great Britain will have it so, although parts of the EMPIRE, yet as no parts of the *state*: although offsprings, and still British subjects; yet as external dominions dissevered and distinct from that *organized* body, which is called the kingdom of Great Britain. They are to be considered, since America as well as Great Britain will have it so, as removed from, and incapable of being admitted to a perfect participation in the legislature, the soul of the British dominions. The politics of Great Britain will consider them, for the future, as subject to the King, not as sovereign head of *a being*, of which they are in part *the body*; but as subject to the King, *in his parliament*, as head of another being, of which the people, the *communitas*, the British realm, is the body; and of which body the Colonies are no ways parts, *participants, and integrant*. The politics of America, on the other hand, consider these
external

external communities, each as parts of a political body, of which the King (as part) is the head: That therefore they are subject *to the King as to their own head*. How wide soever these two lines of reasoning may diverge from each other, yet both set out from one point; namely, *that the Colonies are separate and distinct communities without the realm*. The one system of politics says, that they are, as such, subordinate in all cases whatsoever, to the government of a superior sovereign community: the other system allows and admits of * *a certain mode* of subordination, carried to *a certain degree*: and therefore say, that if they are free British subjects, *this sovereign must be limited*; and that, although it may be difficult to draw the line of limitation, yet some such there must be. I think that those are not to be heard, who affirm, “ † That no line can “ be drawn between the supreme authority “ of parliament, and the total independence “ of the Colonies;” because, “ ‡ if there

* Resolved, That his Majesty's subjects in these Colonies owe the same allegiance to the crown of Great Britain, that is owing from his subjects born within the realm, and all *due subordination to that august Body the Parliament of Great Britain*.

Congress met at New York, Oct. 19th, 1765.

† Governor Hutchinson's Speech to the Assembly, Jan. 6th, 1773.

‡ Assembly's Answer.

“ be

“ be no such line, the consequence is, ei-
 “ ther that the Colonies are vassals of the
 “ parliament, or that they are totally inde-
 “ pendent.” I shall therefore, in this se-
 cond part of my work endeavour, “ how-
 “ ever arduous the task may be, to draw a
 “ line of distinction between the universal
 “ authority of parliament over the Colonies,
 “ and no authority at all *.”

It is from very false and artificial ideas of the nature of the political community of a state, from party reasoning on the nature of government; that so many wild and im-

* If your Excellency expects to have the line of distinction between the supreme authority of parliament, and the total independence of the colonies drawn by us; we would say, it would be an arduous undertaking; and of very great importance to all the other colonies. And therefore could we conceive of such a line, we should be unwilling to propose it *without their consent in congress.*

House of Represent. of Massachusetts, answer to Gov. Hutchinson.—January 26th, 1774.

If from the nature and end of government, the supreme authority of every government must be limited, the supreme authority of parliament must be limited; and the inquiry will be, what are the limits of that authority, with regard to this Colony. To fix them with precision, to determine the exact lines of right and wrong in this case, as in some other, is difficult, and we have not the presumption to attempt it.

Answer of the Council of the Massachusetts, to Gov. Hutchinson.—January 25th, 1774.

practicable

practicable notions have been propagated on the nature of emigration and colonization. Notions which go to the dissolution of all government, and to the erecting as many of the parts of a state, as in the *spirit of repulsion* fly off from it, into distinct states independent of it. It does therefore here become necessary, to recur back to first principles.

I shall therefore inquire how an individual, or a number of individuals *can separate* themselves from the society, community, or government, to which they belonged, and of which they were parts. How, being thus separated, they can become *distinct communities*, and in what relation of connection or subordination such distinct communities must stand to the community from whence they went forth. Different cases arise, and very different conclusions derive, according as the nature of the community from whence the emigration goes forth, is stated to be; or as the regions, to which the emigrants go, and in which they settle, are found to be circumstanced; as whether they be absolutely *loci vacui*, or belong to some other state, or can be considered as external parts of the empire of the state, from whence the emigrants departed. I shall mark the false conclusions as they derive,

derive, from false states of the case; and I shall then endeavour to state the actual case of the colonies of Great Britain, as they now stand in fact; although I think that state (as I have said) an artificial one. Lastly, from thence I shall attempt a description of that state of government, which must operate between a kingdom, and such other communities as are esteemed, although parts of its *empire*, yet *external parts and without that kingdom*. I mean to inquire what the government should be, *rebus sic stantibus*; so that the unity, vitality, and efficiency of the empire of Great Britain on one hand, and the rights and liberties of the colonies (as communities of British subjects on the other) may be preserved, maintained, and supported.

The first case exists in that temporary society, under which the individual finds himself, from the nutrition which he receives from his mother, and from the protection under which the father brings him up to manhood. When he arrives at this state, the connection, and the law under which the *son* stood, ceasing with the end effected and perfected, the united subordinate state of the son becomes dissoluble. He hath a perfect right to emigrate from *this society*, to provide for himself, and to settle wherever he shall

shall find the means of so doing. He therefore stands *disunited from all union*; discharged of all subordination, and free from all government of the parental power. The obligations of gratitude, the ties of affection, are eternal, and must remain so long as the parent lives; but these are the duties of the *inward*, not of the *outward* man, who is the object of government.

If two fraternal branches of a family, co-existing under a common father; or two independent equal individuals, leagued in a mutual communion of society, choose to separate from each other: the emigration of the one from the other, is a perfect disunion of all connection; a perfect discharge of all claims from the one upon the other; and they immediately form two distinct, intire, and independent communities. The above cases exist in fact and right, and come into practice amongst the Indians of North America, * who are not yet advanced in the progress of human nature, *to the forming communities organized by governments.*

If there is any state so constituted in the definite form of its dominions, and by the principles of its government, that these do-

* Memorial presented to the late duke of Cumberland. Vide Section I. p. 2. of the 1st Vol.

minions are of a determinate unalterable extent and frame, so that it can neither receive addition to its body by accretion, nor can *extend its soul* (if I may here, after Mr. Locke, so call the government of it) beyond these limited bounds of its realm : so as that it neither possesses nor claims any right of jurisdiction, over any region external to, and without, the body of such state : and if the government of such state is so constituted, that it considers its present component subjects, or its future offspring, as connected and united to the state *by their will and consent only* ; then the government of such state being a compact or covenant, *quod * actum habet transeuntem*, which commences, and is dissolved at the will of the parties ; emigration and colonization from a state, so framed and constituted, may take place at the mere will, and of the mere right of the emigrants.

If any state can be supposed to be of this constitution, and of this frame of empire ; then indeed the propositions stated, by Dr. Burnet, and by Mr. Locke, are true and practicable ; “ That a subject may put himself under the protection of any foreign
“ state ; that he may become naturalized to
“ any other government, by which his al-

* See Grotius, L. I. c. 3. §. 21.

"legiance is transferred." "That being
 "born a subject of no country or govern-
 "ment whatsoever, until by his own act he
 "connects himself;" he is at liberty to de-
 part from any such government, only quit-
 ting those possessions and lands, by which
 alone (they being inseparably part of the
 community) he is connected to the state.—
 From communities thus formed, and that
 thus explain the constitution of their go-
 vernment (if any such there be) the subject
 is at liberty to migrate, and with others, of
 the same right, to form distinct communi-
 ties *in partibus exteris*, perfect and intire so-
 cieties, *sui juris*, independent of the state
 from whence they came forth.

The consequences as here drawn, may
 suit the cases from whence they are de-
 duced: — but these are not the cases on
 which we must reason—this is not the case
 of a community organized by government into
 that "*consociatio plena & perfecta vitæ ci-*
vilis cujus prima productio est summum Im-
perium *." It was not, in fact, the case
 of the Grecian states, who have been so re-
 peatedly quoted, as examples in proof of
 this reasoning. They *did not* permit their
 subjects, as of right and of their own will,

* Grotius, lib. 2. c. 9.

to go forth and separate from the community of the state — on the contrary, they decreed the severest penalties against such desertion. It was indeed of the spirit of the administration of their governments, to permit, as an act of the government, their subjects to migrate and colonize. — And as they did not extend their imperium to the holding possession of dominions, without or external to the state ; so whenever any of their subjects, by permission implied or expressed, did emigrate, set down, and settle in *partibus exteris*—if they were parts belonging to any other state—the allegiance of such subject or subjects, was transferred to that state, within whose jurisdiction they so settled ; or if those external regions were in *vacuis locis*—the emigrants became *sui juris*—the colony became a new and perfect community of itself—began a new commonwealth, independent of the state from whence it came forth.

The question here then comes to its proper issue*—Whether of right a citizen or subject, can depart and separate himself from the community of an established state, without leave first obtained ?

* Solet hic illud quori an civibus de civitate abscedere liceat, veniâ non impetratâ. Grotius, lib. 2. c. 5. §. 24.

In order to state this matter on its true ground, we must review the *nature* and *end* of society, *as organized by government* : — and I cannot do that better, than by using the reasoning and very words of † Grotius to this point. “ Qui in civitatem coëunt, “ societatem quandem contrahunt, perpetuam & immortalem, ratione partium, “ quæ integrantes dicuntur. Unde sequitur has partes non ita esse sub corpore ut “ sint partes corporis naturalis, quæ sine “ corporis vitâ vivere non possunt, & ideo “ in usum corporis recte abscinduntur. Hoc “ enim corpus, de quo agimus, alterius est “ generis, voluntate contractum scilicet— “ ac propterea jus ejus in partes ex primæva “ voluntate metiendum est, quæ minime “ credi debet talis fuisse, ut jus esset corpori partes et abscindere, & alii in ditio- “ nem dare. *Sic vicissim parti jus non est “ a corpore recedere.*

“ * Sane gregatim discedi non posse satis “ expeditum est ex necessitate *finis* ; quæ “ jus facit in moralibus, nam id si liceat, “ jam civilis societas subsistere non possit— “ de singulorum discessione alia res videtur, “ sicut aliud est ex flumine aquam haurire

† De Jure Bell. & Pac. Lib. 2. c. 6.

* Ibid. c. 5. §. 24.

“ aliud

“ aliud rivum diducere.” Here Grotius, fascinated by the brilliancy of his simile, forgets his reason as more truly drawn from the vital organization of the civil body. However, he recovers himself, and adds ;—
 “ tamen hîc quoque servanda est regula naturalis æquitatis——ut id non liceat *si societatis inter sit.*”

Mr. Locke † describes the civil organization of government as a *living body*, animated by a soul which gives form, life and *unity* to it.

By this principle, every individual that exists, or shall arise within the communion, is a part of it as of *one whole* ; a member of it as of *one organized whole* : and is therefore, by nature and right, actually and indissolubly connected with it, so long as that particular union and organization shall continue.

No individual or number of individuals therefore can, from a distinct principle *within themselves* (that is from their own will, and of their own motion) emigrate and quit the community, so as to separate and fly off from the system. — As in nature the power of repulsion begins where that of

† B. 2. §. 212.

attraction ends ; so here in polity, any power in the individual to emancipate himself from the natural tie of this attractive principle, must necessarily introduce the principle of repulsion, to all the effect of corruption and dissolution.

As this attraction is that which gives *unity* to, and preserves the *vitality* of the community ; the spirit of government must be actuated by this principle, as continuing that union and organization.—To this, as to the final cause of government ; to this, as the support of it, as *a living principle*, must all the lines of its power converge.

There may, however, many cases arise, and many such have arisen, not contrary to, but conspiring with this true principle of government, when states may connive at and disregard the going off of certain emigrants ; nay, may even find it for the health and well-being of the state, that such do fly off.

In cases where the departure of such individuals as generally do wish to emigrate, can be of no great hurt to the community, governments have constantly connived at, and disregarded such emigrations : they have rather considered such, as throwing off the
particles

particles of a peccant humour from the body, than as suffering any hurt or loss in the community. When these kind of emigrations of individuals have taken place, without any circumstances which might occasion damage or diminution, or bring any mischief or danger to the state; the governments of all countries, have almost constantly acquiesced in, by taking no notice of them: but the individual has not thereby acquired any right, *sui juris*, thus to emigrate, otherwise than, and so far forth, as the state of which he was a member, has suffered a dereliction of its right to him. On the contrary, wherever governments have taken notice of these emigrants, as departing under circumstances hurtful to the state, they have always deemed such emigrant a fugitive, and his act of emigration as criminal *.

There may arise other cases, in which states may permit even numbers, in whole bodies to depart from them. If a state bounded in its dominions, confined from the nature of its own system, in the form

* I might here establish this proposition as a fact in polity, by stating an invariable series of examples and precedents, taken from the Roman and Grecian states; indeed I had so done, but finding it a matter of tedious detail, and that the argument requires not those aids, I have passed them by, and rest the matter on the spirit, constitution and practice of our own government alone.

and size of its own natural body, feels itself loaded with a repletion of blood; it becomes a natural relief to it, to throw off part; and thus many states have done, by sending out swarms of colonies. If a state finds itself too narrowly circumscribed in the operations of such natural powers as have grown up within itself; and that there are objects of trade and settlement without, to which, if it should send some of its subjects, although it cannot extend the limits of its own *corporal vitality*, it might, however, greatly strengthen and benefit its own *internal interests*; such state will on this motive, (many have so done) send out colonies for the purpose of actuating such beneficial interests. Yet the sending out these colonies, the suffering these emigrations, must originate with, and be the act of the state; and must be conducted by and carried on, under the protection of the original state.

If states permitting or promoting emigrations, suffer the emigrants to settle on lands belonging to other states—they suffer the allegiance of such emigrants to be transferred to that state.

If they suffer them to settle in *locis vacuis*, and to acquire a separate *dominium*, they then

then suffer them to become a community, *sui juris*—which was the precise case of the Grecian Colonies.

But if these Colonists settle on lands which in *partibus exteris*, are (according to the usage and law of nations) the dominions of that state from whence they came forth ; then, although these Colonists should be permitted to form separate and distinct communities, to establish governments having *sovereign jurisdiction, within the limits of their own corporation* ; yet being settled on the lands, and within the dominions, although external dominions, of the parent state ; these colonies remain under a certain relation of allegiance to its general and supreme Imperium.

Let us now apply these principles, and this doctrine, to the actual state of the British government and British colonies : and from thence endeavour to explain *what is that relation of allegiance*, under which they are bound to the imperium of Great Britain ; and *what that species of sovereign jurisdiction* is, which, consistent and coincident with the general imperium of Great Britain, they may and do hold, exercise and enjoy.

“ By

“ By the common law of the Realm (says
 “ Mr. Justice Blackstone) every man may
 “ go out of the realm, for whatever cause
 “ he pleaseth, without obtaining the King’s
 “ leave ; provided he is under no injunction
 “ of staying at home. (Which liberty was
 “ expressly declared in King John’s great
 “ charter, though left out in that of Henry
 “ the Third :) but because that every man
 “ ought of right to defend the King and
 “ his realm ; therefore the King, at his plea-
 “ sure, may command him by his writ, that
 “ he go not beyond the seas, or out of the
 “ realm, without licence : and if he do the
 “ contrary, he shall be punished for dis-
 “ obeying the King’s command.”—The fact
 is, that the subjects of this country, from
 the earliest establishment of its government,
 having connections with Rome, and the
 people, from the earliest time, having been
 a commercial people, have exercised this li-
 berty of *going abroad* from usage, time out
 of mind. But *this going abroad was never*
considered as emigrating, as that act by which
 the member of the community separated
 himself from and quitted his connection with
 the state. On the contrary, when this li-
 berty of going abroad was suffered or per-
 mitted, it was always under condition, im-
 plied or expressed, “ * quod se non divertat

* Coke Instit. 3. c. 84.

ad partes externas sine licentia regis."—And that this liberty was to be enjoyed and exercised under the limitation of these conditions, is plain from the statute of Clarendon, in the tenth year of Henry the Second, called the Affize of Clarendon, wherein, *Facta est recognitio cujusdam partis consuetudinum & libertatum antecessorum Regis*; And from the nature of the writ or proclamation, which the King hath of all times been empowered to issue. And Sir Edward Coke, in stating the rights of the crown, and the custom of the realm on this head, grounds and explains it on those very principles of government in general, which I have above described in the analysis that I pursued. Nay, if we had not seen, in the analysis above pursued, how the governing power is bound to maintain *the union and vitality* of the state; an explanation of these proceedings in the actual exercise of government, in the reasons and ground of them, would have led us to the same proposition. By whatever liberty, practised or assumed, it is, that the subject, as of right at common law, *goes abroad*, without asking or taking leave: no subject does or can *emigrate* (in the proper sense and idea of that act) without the King's licence had, or supposed by his conniving at it. This power is lodged in the office of the supreme magistrate, in
the

the King "as the representative and delegate" of the whole community in this act. From the King every British Colony, which went forth of the realm to settle in *partibus exteris* *, had licence to transport themselves, their children, their servants, and their goods, and to settle in these foreign dominions of the crown, on lands which were to be holden of the King, his heirs, and *successors, Kings of England*, as of the crown of England.—They were to remain under the protection, and in the ligiance of, and in subordination to, the sovereign power of the crown, *as here the delegate of, and representing the whole nation.*—*This power of the supreme sovereignty* is expressly and specially reserved in the very act of granting to them the summum imperium of government, within the limits of their own jurisdictions. Fact and reasoning, hand in hand, hath thus led us to the actual state of the British Colonies—and mark that, as in fact,

* " Our ancestors, the first settlers of this country, " having, with the royal consent, *which* we humbly " apprehend *involves the consent of the nation*, and at their " own expence migrated from the mother kingdom."

Address of the House of Representat. of Massachusetts Bay, Boston, Jan. 20, 1768.

The Descendants of his Majesty's subjects in the realm, who migrated with the consent of the nation.

Their letter to Lord Shelburn, Boston, Jan. 15, 1768.

so in right, they are external distinct communities of Colonists, who migrated from the mother country, with the consent of the nation, and with the same consent have settled on lands, which are the external dominions of that nation — That they have thus emigrated, and thus settled, with express conditions that the *individual* should have, hold, exercise, and enjoy all the liberties, franchises, and pre-eminences of British subjects — That *communities*, thus composed of such individuals, should have full and perfect political liberty, both of jurisdiction and legislation, as far as * is *consistent with a subordination* to the sovereign jurisdiction and supreme legislature of the whole empire. From the notions of this subordination, which are generally current, it will be very difficult to form any idea of its nature, and of the rights derived from it. Great Britain says, that it is not necessary, in order to give right to its power, that the subordinate state should have any communion or participation of will with the will of the governing state. The Colonists, on the other hand, say, that such an equal communion of will, as should give freedom in the exercise of it, *becomes utterly impracticable*, from the remote and separate situation of their local circumstances, rendered thus incommunicable; and that therefore, a se-

* Letters, as above.

parate legislature is an absolute right of a community of British subjects residing out of the seat of the empire. Here then comes in the question, * An summum imperium habere possit is, qui *inæquali fœdere* tenetur. The colonists say, that "† there never existed, " nor ever can exist, a state thus subordinate " to another, and yet retaining the slightest " portion of freedom."

This prompt declaration treads on the deceitful and dangerous ground of general propositions; distinction becomes necessary, when it is applied;—I shall therefore go into a more precise examination of it.

"‡ So far as any thing is passive, so far " it is subject to necessity; so far as it is an " agent, so far it is free: for action and " freedom are, I think, identical terms. " The spring of action is the self-motive " power, which is in animals spontaneity, " and in rational ones, what we call li- " berty." "|| God which moveth mere " natural agents as an efficient only, doth " otherwise move intellectual creatures." Every being, moral and political, that is a free agent, must have reason and will, and

* Grotius, lib. i. c. 3. § 21.

† Meeting of Provincial Deputies of the several counties of Pennsylvania, instructing their assembly.

‡ Dr. Clark's Letters on Liberty.

|| Hooker, B. i. §. 4.

the power of exercising that in what we call choice. It is in the reasoning and will of the legislature, in the soul (as Mr. Locke expresses it) of the political body, that this freedom consists and resides. How then the will of any superior governing being, (the governed having no communion nor participation in that will which acts upon it *ab extra*) can act towards this subordinate, without destroying its freedom, seems indeed, as the people of the Colonies say, an arduous task, if possible, to describe. Arduous I acknowledge it to be, but not impossible; and the difficulty which does occur, lies not in the thing itself, but in the tempers, with which men generally come to the consideration of it. These matters are seldom thought on, never seriously discussed, until the passions of parties call forth the discussion—and then they never examine their own ideas, but oppose those of others—In the present hour there is (as the sailors term it) a lull in the storm that hath been up—Before the next blast, which is thickening black and heavy in the wind's eye, bursts down upon us, let us calmly and deliberately examine this matter; and begin by examining our own ideas.

Where Will resides it must be absolute. The will of a man is absolute over his own being: yet he is a free agent, because the
spring

spring of that will is within himself. “ * The
 “ lawful power of making laws to command
 “ *whole political societies* of men, belongeth pro-
 “ perly unto the same intire societies.” This
 Will of the society must be absolute over the
 whole body of the society, but being in the soul,
 the integrant self-motive part of that being,
 the intire society acts only on itself, and is
 therefore free. As of the Will, so of the
 executive part of such being, it may be said
 to remain free, † *dum rex ei præsit ut caput*
istius populi, non alterius populi, nam im-
perium quod in rege est ut in capite, in po-
pulo manet ut in toto, cujus pars est ca-
put. Here then the government springing
 from within, the whole intire society acts
 from its own spontaneity, and by the vigour
 of the principles of its own nature. This
 government, therefore, I will define by a
 word, which precisely and essentially expresses
 that nature, and will call it INTERNAL GO-
 VERNMENT.

“ ‡ That being which has not the oppor-
 “ tunity or liberty of choosing for itself, and
 “ acting accordingly from internal principle,
 “ acts (if it acts at all) under a necessity in-
 “ cumbent *ab extra.*” *Ubi rex ei præsit*
ut caput alterius populi. “ It is only an

* Hooker, Ibid. §. 10.

† Grotius, lib. 1. c. 9. § 8.

‡ Mr. Woolaston, Relig. of Nature, sect. 1. prop. 1.

“ instrument

“ instrument in the hand of something
 “ which imposes the necessity, and cannot
 “ properly be said to act, but to be acted.”
 That Being which hath not, in its own nature, self-motive power, is not an agent. That moral or political Being which hath not within itself these springs, and that cannot, of itself, act from the internal vigour of these springs, is not free. If the motive power acts *from without*, and if the Being acted upon *has no communion in, no participation with, the will of the governing power*—this government may be called, as in fact it really is, EXTERNAL GOVERNMENT.

“ The art of civil government (says Mr. Harrington *) is twofold; *national* and *provincial*.

“ National is that by which a nation is governed independently, or within itself.

“ Provincial government is that by which a nation is governed dependently, or by some foreign prince or state.

“ Force is of two kinds, natural and unnatural. Natural force consists in the vi-

* In his Political Aphorisms.

“ gour of principles, and their natural necessary operations.

“ Unnatural power is *external*, and adventitious, in opposition to the vigour of principles, and their necessary working, which from a violation of nature is called violence.

“ National government is an effect of natural force or vigour.

“ Provincial government is an effect of unnatural force or violence.”

What I have here above described, gives the true ground of distinction in nature and on principle, between INTERNAL AND EXTERNAL GOVERNMENT: and I have the more particularly endeavoured to analyse and mark this distinction—because it hath been of late a sort of fashion, even amongst some learned men, and popular in general, to scout all such distinction and its consequences, as groundless and ridiculous.

However, when I come to consider that system, by which the British Colonies (if they must be held as distinct external communities) are to be governed; the line of my reasoning runs not in either of these diametrically

cally opposite courses. I neither think *that* government (free and sovereign as it may be, within the limits of its own jurisdiction) which is given to the Colonies, and by which they act, *national and independent* : nor can I ever admit, that the imperium, by which Great Britain doth of right govern her Colonies, is *provincial* ; is that unnatural force or violence, which, being intirely *external*, must place the governed in a state of absolute slavery *. I do not believe that Great Britain wishes or means to act by *provincial* government towards the Colonies : nor do the Colonies, in fact (speaking of what was the general spirit of them) aim to establish a separate independence *by national government*. Both the one and the other, however, have advanced their claims, and even their acts, beyond that line, which, in right and policy, is the true boundary between them. The spirit of dispute hath wrought up in each fears, jealousies, and suspicions, that neither the one nor the other will think themselves safe, unless they have each some advanced fortified posts, even beyond the line of their boundary. When *this line* is rightly understood, that understanding may give a confidence which shall become the true ground of pacification.

* Beneficio quàm metu obligare homines malit ; exterarumque gentes fide ac societate junctas habere, quàm tristi subjectas servitio. Liv. Lib. 26. § 49.

I think *this line* by nature, and in principle, is plainly to be marked on the true grounds of policy, between the two extremes above described; and that between *national and provincial* government, there is a mixed or COLONIAL GOVERNMENT.

Colonial government, so far as it respects the acts of the Colony operating within its own jurisdiction, on its own body, and in matters respecting its own rights only, is *internal*, and as such, and so far forth, absolute and sovereign. It is, so far as respects its own jurisdiction, within its own community, national, though not independent. It cannot be independent, because so far as it is a part (under a peculiar state of organization) of the whole empire of Great Britain, it is subordinate.

Where a people or colony is permitted to go forth (and without such permission, as is seen above, it cannot go forth) and to form, *in partibus exteris, a distinct and intire community*; and where that community consists of individuals, persons who have the rights, liberties, and franchises of British subjects, they have, “* carrying with them the laws “ of the land wherever they form colonies,” a right to *political liberty*, as far as is con-

* Pratt and York.

forth, *without the line of its colonial jurisdiction*; and is not yet within the realm of Great Britain—it is under the jurisdiction of this *external government*. The moment that it passes the line which bounds the jurisdiction of the colony, it is no longer in the jurisdiction nor under the protection of its own government; it enters the actually exercised jurisdiction, and comes under the immediate protection of the government of the kingdom. Where the one ends, the other must begin.—It is, therefore, on this actual state of the case, that the supreme government hath a right to exercise and exert *upon this line* its whole and sovereign power: it is on this actual state of the case, that the government of Great Britain hath the same right as all other governments have, hold, exercise and enjoy, to make all regulations whatsoever, and to impose all such duties and customs, on the transit of goods, passing the boundaries of its jurisdiction, as the œconomy and necessities of the state shall require.—This right, even exercised, does not interfere with any rights or franchises which the Colonists have, or can enjoy, equally with any other his Majesty's subjects of the realm—And yet, so far as respects the Colonies, this is external, or provincial government. There is also even in the internal government, which the Colonies have
a right

a right to, and to enjoy, *a mixture of external government*.—For first the whole body of the government must remain and act as subordinate to the government of the mother country.—The King also even in his administering the powers of their internal government, by himself, or his lieutenant, must conform this his administration not only to the laws of the Colonies, but to such laws of the mother country, as shall from time to time be made for the regulation and controul of them: for it is the parliament alone that can superintend the mode of their government. The King, or in the language of our constitution, those ministers who advise him, and instruct his lieutenant the governor, are amenable to the laws and parliament of the supreme government. He cannot do, nor by his authority permit, any thing to be done, contrary to the laws or majesty of the government of Great Britain. The legislature is bound, as it did establish, so to support his majesty's government: and in all cases of difficulty, to which the actual powers of the crown do not regularly extend, the king must apply to parliament for such support.

There may arise cases in which the supreme power of parliament ought, at its own instance, to interpose. If either the
d 4 King,

King, or the people of the Colonies, should adopt any principles, or take any measures which tend to a dismembering of the empire; if the King should consider the lands as belonging to himself personally, in his seignoral right, distinct from the right which the state has in them; if the Colonists should construe their right of property, as deriving from any power or right, independent of the property which the community had in them; if the king should consider the people of the Colonies as his subjects, in his foreign seignoral dominions; if the people should aim to consider the king as their *seigneur, ut caput sui populi*; if they advance beyond the bounds of their jurisdiction, and *there* assume to act; and in act to impede or repel the will and exercise of the supreme and sovereign government of the mother country;—if they thus cease to act *as Colonies*, they render it necessary, and a duty in the sovereign power of the supreme government, to act towards them *as Provinces*, and to govern them by *external* or *provincial government*, which is force, as above described.

If they dispute the grounds of their subordination; and reject those regulations by which their acts and interests are to be governed; if they withhold intentionally, or
from

from difficulties as to quotas, &c. that aid and duty which they are bound to afford, and pay, to the maintaining the safety and defence of the whole empire; if they attempt to form positive alliances, or hold secret connections, either in their fœderal or commercial capacity, with foreign states, in direct violation of the laws, and to the hurt of the majesty of the supreme empire; if they presume to do acts fœderal, or acts of hostility, independent of the government of the mother country — the government has not only a natural, but an * express right, *to put them out of its protection*, to reduce them to provinces (in the sense of Roman provinces) superceding that internal government wherein and whereby they before acted as political free agents. This is the true intent and meaning of the act of parliament, which declares *the right of parliament to make laws binding upon the Colonies, in all cases whatsoever*; which refers only to cases of necessity, and not to the wantonly and arbitrarily interfering with, or superceding that political liberty; which they have, so long as they do not misuse it, an absolute and indefeasible right to have, hold, use, exercise, and enjoy. While they perform their duty of *aid and*

* This is an express and positive stipulation, even in the Charters of the greatest latitude of liberty.

service

service to the supreme government, in return for the protection they receive from and within its empire: while, being permitted to act and trade (out of their own jurisdiction) within and under the protection of this empire, they conform to its laws and acts of trade: while they submit to pay every tax, which the will of the supreme legislature (not interfering with *the free-will* of the internal colonial government) lays on all property being within, or passing through, its jurisdiction, and under the protection of its empire: while those communities remain in that relation, under which they were settled, and are established, as British colonies having within themselves political freedom—these colonies have a right to be governed within this jurisdiction by their own laws, made by their own internal will; and to give and grant their own money, in those subsidies which are of goodwill, to all the intents, extents, and purposes of a free government.—So long as they are, and act as legally and constitutionally established—it would be against the law of nature, of nations, of our own constitution, if even the omnipotence of parliament itself was to interfere to the obstructing or superceding their freedom. The Supreme Governor of the world, whose absolute power goes over all his works, breaks not in upon
the

the free-will of man ; He leaves him sovereign and absolute in the internal government of his own human system. This external part of the mixed colonial government, necessary to the union of the empire, to the vitality of the state, and to the efficiency of its government, lies in the first principles of right, as founded in the nature and end of that government, by which an empire so constituted, is organized.—It is necessary to the safety of the empire, that such a power should, like the palladium, be lodged in the most secret and sacred adyta of the state. Nothing but extreme necessity, *nè quid detrimenti capiat respublica*, should as in the last resource call this forth — as the dictatorial, or extraordinary exertion of the censorial powers were called forth :—an ordinary exertion of these powers of external government would have been tyranny ; they were not, therefore, lodged in the supreme magistrate, but resided in the majesty of the people. Although this similar censorial or dictatorial power does, in the theory of our constitution, *in the intendment and remembrance of the law* (as above explained) go to all cases whatsoever : yet if ever it should be exerted, *as an ordinary power*, except in that extreme necessity, where alone it could prevent a dismembering of the state, a subversion of government, or a total dissolution of
the

the community of the empire, it would be in like manner tyranny. It is necessary that some such *remedial power* should reside somewhere in the empire. In an empire, having a constitution like ours, it can reside nowhere but in parliament. As in the Roman state, the political liberty of the government was safe, in that these powers could not be exercised, but *jussu populi*: so is it the best safety, and security, that the liberties of America can have, that this power is not lodged in the crown, but resides in parliament alone.

This power breaks not in upon the freedom of the Colonists; interferes not with, nor obstructs the political liberty of the Colonies: Because it can act only where and when all such are already broken in upon, or dissolved; or where, as remedial, it may prevent such subversion of rights, and such dissolution of government.—This right, therefore, infringing no rights, liberties, or franchises of the individual, and not interfering with the freedom of the constitution of the Colonies, while such remain fixed in, and actuated by, their fundamental principles—but on the other hand, necessary to † the supreme superintending legislature of

† Boston Letters, as before.

the whole empire—is, to the utmost extent and intent of the claims as stated by the Colonies, consistent with the fundamental rights of nature and the constitution, and leaves the legislature of the Colonies, to express it in the words of their own claim,
 “ * *as perfectly free as a subordination will*
 “ *admit.*

If *this line of colonial government*, thus found just and safe *in Theory*, should, when applied to the actual state of the constitution of the Colonies, prove conformable *to Fact* as established on right, This may, This is the only one that can become A LINE OF PACIFICATION. We will then try it by fact.

It is in subordination to a mixed imperium of *colonial government*, thus bounded and limited in the process of its own operations, and by its own acts, that our Colonies (considered as British settlements of British subjects) † do carry with them, wherever they go, under his Majesty's protection, *the laws of the land*; namely, the common law, and all statutes confirmatory of it; whereby they “ ‡ have, hold and enjoy all liberties
 “ and immunities of free and natural sub-
 “ jects, to all intents, constructions, and

* Boston Letters, as before.

† Pratt and York.

‡ General words in all the charters.

“ purposes

“ purposes whatsoever, as if they and every
 “ of them were born within the realm ;”
 and they are bound by the like allegiance
 as every other subject of the realm is. Hence
 it is, as the Colonists themselves express it,
 that they have a right to a “ * full enjoyment
 “ of the rights of the constitution upon which
 “ government itself is formed, and by which
 “ sovereignty and allegiance are ascertained ;
 “ that is, as full an enjoyment, as is con-
 “ sistent with a subordinate government,
 “ and a † subordinate legislation.”

Hence, therefore, it is, that all statutes
 touching the right of the succession, and
 parliamentary settlement of the crown, with
 the statutes of treason relating thereto, do,
 from the very nature of the subordination
 and allegiance above admitted, *extend to all
 British Colonies and plantations.*

From the rights of the Colonists, and
 from the constitutions of the Colonies, as
 above explained, it is that all statutes regu-
 lating or limiting the general powers and
 authority of the crown, and the exercise of
 the jurisdiction thereof ; all statutes, decla-
 ratory of the rights and liberty of the sub-
 ject ; do extend to all British subjects in the
 Plantations or Colonies, as of common right,

* Boston Letters, p. 13.

† P. 47, 48.

and as if they and every of them were born within the realm. Hence it is, that the rights of the subject as declared in the petition of rights; the limitation of the prerogative by the act for abolishing the Star-chamber, and for regulating the Privy Council; the Habeas Corpus act; and the Bill of Rights; do of common right extend to and are in force within said Colonies and Plantations. Some persons, reasoning from the precedent of Ireland, doubt the extension of the Habeas Corpus act to the Colonies.—But conceiving it to be, as I do, declaratory of a common law right, and providing for the full and efficient exercise of that, upon the principles above laid down—I have not hesitated to say it does extend to the Colonies. This proposition must be here understood to mean all statutes respecting the general relation between the crown and subject; not such as respect any particular or *peculiar establishment of the realm* of England: as for instance, by the 13th and 14th of Car. II. cap. 2, the supreme military power is declared to be in general, without limitation, in his Majesty; to have always been of right annexed to the office of King of England, throughout all his Majesty's realms and dominions: yet the enacting clause, which respects only the peculiar establishment of the militia of England, extends *to the realm of England only*. The supreme military power
of

of the crown in all other his Majesty's realms and dominions stands, as to this statute, on the basis of its general power, unlimited. The several legislatures, however, of his Majesty's kingdom of Ireland, of his dominions of Virginia, and of the several Colonies and Plantations in America, have, by laws of their own (operating within the precincts of their jurisdictions, to which the King has given his consent) limited the powers of it, and regulated the exercise of it.

Statutes and customs which respect only the special and local circumstances of the realm, do not extend to and operate within the said Colonies and plantations, where no such special and local circumstances are found. Thus the ecclesiastical canon law, and all statutes respecting tythes; the laws respecting courts baron and copyholds; the game acts; statutes respecting the poor, and settlements; and all other laws and regulations, having special reference to peculiar and local circumstances, and establishments within the realm, do not extend to, and operate within these settlements, *in partibus exteris*, where no such circumstances or establishments exist.

It is a consequence, on the other hand, of the supremacy of the mother country, that all statutes enacted since the establishment of Colonies and plantations, do extend
to

to and operate within such Colonies and plantations as are specially named as included in such statutes, or generally included by the provisions of such statutes being declared to extend to all his Majesty's dominions, that now are or hereafter shall be. But then, from the very nature of the supremacy of a free constitution, from the essential nature of the political liberty of the constitutions of the Colonies, this operation has its limits. In like manner, as the Supreme Being, in the moment that he creates a free-agent, does in that moment, and in that instance, necessarily create limits to his own absolute omnipotence, which *cannot act as an efficient on this free-agency*: So does *the constitution of Great Britain*, actuated by the King, in the moment that it *creates communities, having political liberty*, limit and bound its own supremacy; which, though in right it goes over the whole empire, cannot, in fact, in the ordinary exercise of it, do any act, within the jurisdictions of the Colonies, which supercedes or destroys that political liberty which it has created; until these communities have, by some act of theirs, broken the order of the empire, and exceeded the bounds of their proper constitutions.

No statutes made in the British parliament,
 VOL. II. e

ment, since the establishment of the said Colonies and plantations, except as above described, do extend to, and operate within them.

Upon the matters of fact, right, and law, as above stated, it is that the British subjects *thus settled in partibus exteris*, without the realm, so long as they are excluded from an intire union with the realm, as parts participant and integrant of the intire community, have a right to have, as they have, and to be governed by, as they are, *a distinct intire civil government*, having and exercising, within the precincts of its own jurisdiction, sovereign authority of the like powers, pre-eminences, and jurisdictions (conformable to the like rights, privileges, immunities, franchises, and civil liberties) as are to be found and are established in the British government, respecting the British subjects within the realm; holding, using, exercising, and enjoying the same in subordination to the supreme sovereign power of the empire of Great Britain.

Some of the Colonies conceiving, or being willing to conceive, the *summum imperium*, or sovereignty of this *intire government* to be a sovereignty which ought to be independent *in its external relations* to the general empire of the supreme state—say, that the officers and ministers, which actuate the powers of
I the

the crown, and of its magistracy, are *the immediate servants of the community*, in which they hold these offices, and as such ought to be dependent on the will of that community alone for their support and maintenance; “ * that the community *whom these magistrates and civil officers serve*, “ should be the assessors of their pay.”— Having fortified themselves in this conclusion, they go on to state, as matter of grievance, that the rights of their civil government are superceded by the crown’s paying their governors, judges, sheriffs, and other civil officers, independent of the grants of the people; on whom, as they say, (in a manner similar as the crown does on parliament) these officers ought to depend. Having got thus far in their reasoning, their representatives in assembly met, proceed to action, and have, by a process equally explicable as maintainable, brought forward and exhibited articles of impeachment, before the council-board, (as a supreme and *dernier resort* of judicature) against some of these officers as guilty of corrupt practices and high misdemeanours (by a species of treason against the state) in receiving pay and support from the crown. The leaders of these reasonings and of these measures

* Boston Votes.

forget, in the fanaticism of their zeal, that these officers, ministers, and magistrates derive their appointment mediately or immediately from the crown—That the commissions of these officers issue primarily from the power of the crown—That they are the *servants, not of the community, in which they act, but of the crown*, by which the internal government of the Colonies is administered—That it is of the essence of colonial government that they should be so—and that therefore the position which says, that they should be paid by those exclusively whom they serve, will go further in a direct contrary direction, than these reasoners wish. What is true of the government of a sovereign independent state, cannot, on the very reason of that truth, be true of the colonial government of a subordinate community. In the first part of this book, I had stated the matter of this contest, so far as it stood on the ground of expediency: What I now state goes to an assumed ground of right, for which, in the nature and essence of the constitution of a Colony, there cannot be any possible foundation. That the magistracy, the offices, the judicatories should have all, and the like powers, as they have in the mother state, is *of the essence of political freedom*; but if the magistrates, the officers, and judges are detached from their dependence

pendence on the crown, and put into a state of absolute dependence on the people of the Colony, *where is that subordination of government, which is also of the essence of a Colony?* Such Colony, claiming only in right, political internal freedom of government, would acquire, *in fact*, national or independent government.

The support of the establishment of the government of the Colonies, and the pay of all the civil officers therein, hath hitherto, in general, been suffered by the crown to depend upon the grants of the people ; the crown supposing and requiring, that it be granted in a manner similar to that by which the King himself depends for his support on parliament. This is the true spirit of colonial government, admitting the utmost perfect enjoyment of political freedom, exactly as it is held and enjoyed within the constitution of the mother state—And thus, I think, it should be held and enjoyed, *as far as it is consistent with a subordination to the supreme government.* But the Colonies, who reason and act as above stated, *have here passed that line*, which can be the only line of peace and right between Great Britain and her Colonies. The attempt to detach these officers and magistrates of the crown from their dependence on the King,

e 3

who

who is to actuate the supreme powers of the crown ; the attempt to render these officers and magistrates absolutely dependent on the *temporary will* of the people in their legislature—goes directly to the subversion of *colonial*, and to the establishment of *national or independent* government.

From these principles I venture to affirm, that, if there be any spirit of pacification yet left, those Colonies who have attempted these encroachments beyond the line of their rights, must retreat back again within their line. And if then (which is all that the government of the mother country hath hitherto required) the Colonies will make their grants for the support of government *by a permanent revenue*, given in such form as to support the officers and magistrates thereof in a state of independence, and free from all undue influence, (as Jamaica has done, and found no evil in it) I think the crown would, I think in the spirit of colonial government it should, abstain from making grants to these officers thus already adequately provided for. And I think it is a fair conclusion from the theorem above stated, that (this contest once *thus* settled so as to insure the subordination of the colonial government) these officers should be dependent on the grants of the people, *mutatis*

tatis mutandis, just as the crown and its officers are on the parliament. In fine, this is, *de facto*, the *old standing* on which the crown originally put them. This latter mode, by which the crown undertakes the support and maintenance of its own officers, was a measure merely defensive, in order to maintain its constitutional authority over its own officers, actuating its own powers.—The Colonies have been repeatedly cautioned of this, in being told that they would drive the crown into the necessity of this measure—unless they would support their governments, and the officers thereof in a state of freedom from all undue influence—and it is now in their power to put an end to this measure, whenever they shall please so to do.

As I have here explained, under the theorem above stated, an aberration from the *true line of colonial government*, on the popular side, which, at this moment, is in operation towards mischief; I do not think it would be amiss, to point out another on the side of the crown, which may hereafter lead to more important danger. This case likewise falls under the same theorem.

It hath always appeared to me, that very great objections, grounded in law and policy, do arise against those grants of the

power of government, which are *annexed to the grants of great property* in the Proprietary governments. These grants unite in the proprietor, a predominating power which the crown itself no longer enjoys. They annex the influence of an overbalance of property, in a private subject, to the powers of the crown. This governing proprietor becomes thus both sovereign and landlord : and has as such, a power of a magnitude which is dangerous to the state, and oppressive to the subject. By trusting the powers of the crown in such a Landgrave, the necessary distribution of the powers of government amongst the community, and the perfect and adequate exercise thereof, is, in a way inconsistent with the rights of British government, in part intercepted.

By substituting this Landgrave as the sovereign, the people are in their actions and affections cut off from that direct union and communication with the crown, which the true spirit of constitutional allegiance always cherishes and keeps alive.

This Landgrave either by the influence of the balance of his property, may create a leading too great even for the crown itself to oppose : Or, while the honour and dignity of the crown is committed in every dispute, which

which the landlord has with his tenants ; while the interest of the supreme state becomes subordinate to the interest of the landlord's property, the government may become odious. Those disputes which render the people discontented with government in the proprietor, tend to alienate their affections from the crown. For various reasons, and on various accounts, the people do not find that inward security, and external protection, under the administration of a proprietary government, which they think the rights of the British constitution hold out—They do, therefore, incline to *stretch their duty nicely* towards such.

There were many such governments at the first settlement of the Colonies*—“ all “ were made unhappy by them, and found “ no relief but in recurring finally to *the immediate government of the crown*. Pennsylvania and Maryland are the only two “ of the kind remaining ;” and Pennsylvania did at length prefer an humble petition to the King, praying his Majesty to take that province under his immediate protection and government. Thus much, thinking the rights of the crown, the liberties of the peo-

* Cool thoughts on the situation of affairs in Pennsylvania, 1764.

ple, and the welfare of the whole empire deeply interested, I could not but say:—I enter not into the subject in particular; that is not here necessary.

From the principles of *colonial government* as above stated, both on fact as well as in right, it follows—That the freeholders, within the precincts of these jurisdictions, have, as of right they ought to have, a share in the power of making those laws of their internal government, which they are to be governed by. This power derives from a right which the community, as a free-agent of political liberty, has to the use of its own will, so long as it is separated from all communion and participation in the supreme will of the mother state. They have, therefore, both in fact and right, a power of sending their representatives, or creating their attornies to act for them, and to consent for them in matters of legislation. These representatives, when met in general assembly, have, together with the crown, a right to perform and do all the like acts, respecting matters, rights, and persons, within the precincts of their jurisdiction, as the parliament hath respecting the realm and British dominions. This legislative is * “ as

* Letters of the assembly of the Massachusetts province, p. 47.

“ perfectly

“ perfectly free, as a subordination will admit.” If it is the constitution of the British empire, that these distinct external communities are to have no communion or participation in the will of the governing community *—they must have *internal freedom of*

* Sir Francis Bernard in his *Principles of Law and Polity*, lays down *synthetically* theorems, the very reverse of these. He says, prop. 14,—“ That legislation is not necessary to an *external and dependent government*, jurisdiction is necessary and essential to it. And therefore, that—

“ Prop. 15. A separate legislation is not an absolute right of British subjects, residing *out of the seat* of empire; it may or may not be allowed, and has or has not been granted, according to the circumstances of the community.”—I must think, following the deductions of my own *analysis*, that if a community of British subjects has a right to political freedom, and *so resides out of the seat of empire*, as to have no participation of will with it; the consequence is necessary, That it must have *an internal freedom of will*: If, on the other hand, the circumstances of the dependance of the community are such, that it is to be governed by *will, ab extra*, I am so far from conceiving how internal jurisdiction, any more than legislation, becomes necessary and essential; that I think it is impossible to communicate it to, or that it can exist in, such a community. The community is from this its nature *passive*, and the jurisdiction of empire must act upon it, *ab extra, as an efficient*.

While the circumstances of a community are such, either from any natural incapacity in its infancy, or from any political incapacity, by its holding principles incompatible with the empire of the mother country, or principles that *refer to a foreign jurisdiction*—there such
Colonies

of will; a representative legislature is the only form, in which the will of *such a community of British subjects* can be formed, so as to be the will of that *intire society*, and free. The freedom of this will stands, in its subordination to that of the supreme state, exactly in the same predicament, as

Colonies *cannot be trusted with their own internal will.* They remain therefore *under pupillage or regency*, governed *ab extra*—as to the jurisdiction as well as will.

Such have been the actual state of many of our Colonies in their first establishment, and of others which we have acquired by conquest—wherein the constituents have been Roman Catholics. Such Colonies have been governed by external government, by a governor, a council, judges, and laws made and imposed *ab extra*. The necessity of this species of *provincial government*, under such circumstances of *infancy or incapacity*, was, in my time, so clearly understood and so universally acknowledged, even by the British Colonies themselves, that when the commissioners of the Colonies, met in congress at Albany in 1754, unanimously adopted a *plan of union* *, as proposed by Benjamin Franklin, Esquire, the establishment of this *external or provincial government*, over such new settlements as should be made by the government of this union, *was the mode of government* fixed for them. A governor general named by the crown, together *with a council* chosen by the Colonies (in which choice these new settlements had no voice) were, as a government *external to them*, “to make laws for regulating and governing such new settlements.” This is rather a higher tone of external or provincial government, than even the government which at present rules in Canada: for in the government of Canada the council are of, and inhabitants in, the community thus governed.

* Vide Appendix, No. IV.

the free-will of the human system does in respect of the supreme power of God himself. In the moment that the Divine Will determined to create the human system having free-will—in that moment, and in that instance (as I said before) he gave bounds and limits to his own will.—Infinite power cannot do acts which imply a contradiction: It cannot create a free-agent, and then act towards that agent as not being free.—The moment that the spirit of the British government determined that the Colonies were separate, distinct, external communities, not having, or capable of having, communion and participation in the will of the supreme state—and yet to be politically free; internal freedom of will, within such communities, became necessary, and was created.—In the moment, and in the instance, in which such was created—the supreme government gave bounds and limits to its own will, excluded from operating within the precincts of the community thus become free.—Although this supreme will, became thus bounded, it was not annihilated; it remained and does remain in a kind of *abeyance*, so long as these Colonies shall continue to act, and to exist, as what they are, free, but subordinate communities; and hath a right to interpose, and to act in all cases whatsoever *as preventive or remedial*, where
the

the preservation of the empire, or the subordination of the Colonies, make such interposition necessary.

These communities, therefore, exactly as man doth in the moral freedom of his will, do and have always possessed (so understood) a perfect internal peculiar power of legislation, within the limits and precincts of their respective jurisdictions; and more especially, a peculiar proper right, by acts of such internal legislation, to give and grant their own immediate property, lying within their own jurisdiction, *in aids and subsidies which are of good will*.—This right, however, goes not *to services*, which are *of right*. The supreme government will of right claim the quit rents, the reserved share of mines and royalties, and every other branch of revenue which comes under the description of services reserved.

“ All the inhabitants of the kingdom,
 “ (says Mr. Bacon*) held their estates under a *general service*, which by common
 “ right they were bound to perform, in
 “ time of danger, to join in defence of their
 “ country. This is the common fealty all
 “ men owe, and which, if refused, renders

* On Government, Part I. Chap. 54.

“ the

“ the party guilty of treason against his country, and his estate under the penalty of forfeiture.” Although therefore aids and subsidies are of good will †; yet, if upon requisition made to the Colonies for such, in support of the empire, and of the government of their respective communities, such are refused either by the whole, or by any particular colony; that refusal, so far as it goes to a renouncing the service which it owes to the supreme state—so far as it withdraws from under the subordination to the general interest—so far as it goes to any claim of exemption from the common burthens of the empire, does, from the very nature of the Being of such communities, justify the exertion of external provincial government; which otherwise remains suspended, as I said before, in a species of abeyance.

This peculiar right of *internal legislature*, cannot, however, pass the bounds of the

† Since writing the opinion above, I read in the instructions given by the provincial delegates to their assembly, the following declaration.—“ We solemnly declare, that if on such occasions, We, or our posterity shall refuse, neglect, or decline to contribute, it will be a mean and *manifest violation of a plain duty*, and a weak and wicked desertion of the true interests of this province; which ever have been, and must be bound up in the prosperity of the mother country.”

jurisdiction

jurisdiction of the community—it is not exclusive of those acts of supreme external legislature, which both in regulation and taxation extends up to the very bounds of this peculiar jurisdiction.—This right of internal taxation cannot go, in any way, or on any pretence whatsoever, to an exclusion and exemption from all such *external taxes*, which the supreme government by imposts and port duties shall think fit and right to lay on all property passing (under its protection) the boundaries of its acting jurisdiction—The Colonies never did, in form and as of right, till the year 1768, claim such exemption—they knew that in most, if not in all their charters, it was an *express stipulation* that they should pay such.—Notwithstanding the ingenuity of the distinction on which this novel claim is founded; namely, that *the Colonies ought not to be taxed by parliament, for the express purpose of raising a revenue*; they must know that the port duties, to which they always submitted, which they have always paid, and which were laid by parliament—*made part of the revenue of the customs, which were given and granted by the Commons of Great Britain to the crown*, in support of its government and dignity.

There is in the nature of the things themselves, in the rights of government, and in the liberties of the Colonies, an *essential difference*

difference between internal and external taxes, and between the power of imposing the one and the other, deriving from the actual distinction, as above stated, between *internal* and *external, national* and *provincial* government. 1. The conditions under which the Colonists did first quit the realm, and settle in America; and on which their powers of government are established; do expressly stipulate for the payment of subsidies, duties, and imposts, (understood as port duties) almost without variation, in the same words, throughout every charter: On the other hand, every charter does expressly or intentionally make a distinction between those, and such taxes as they are permitted and empowered to lay on their own estates, real and personal, *within the precincts and limits of their respective territories,* or on such transactions as shall pass within *their own jurisdiction.*

The charter of Virginia, after having directly fixed the right of payment of subsidies, imposts, and duties from the company to the crown—and having made a grant of the same to the company for twenty-one years—has these words, “that they shall be
“ free from all *subsidies and customs* in Virginia for twenty-one years, and from all
“ *taxes and impositions* for ever;” making not only an express distinction in the mat-
VOL. II. f ter,

ter, but in the *right*. It was in consequence of this, that the charters incorporating them, or erecting them into provinces, gave the internal governments a right of taxing themselves within their precincts.

The charter of Maryland, in all the grants therein made, makes an express saving of imposts, duties, and customs, to the King, and his heirs for ever; which the people of that province, by the express condition of their charter, are bound to pay.—Yet the same charter, making the distinction both in matter and right, between internal and external taxation, says, “ We, our heirs and
 “ successors, shall at no time set and make,
 “ or cause to be set, any imposition, custom,
 “ or other taxation, rate, or contribution
 “ whatsoever, in and upon *the dwellers and*
 “ *inhabitants* of the aforesaid province, for
 “ *their lands, goods, tenements, or chattels,*
 “ WITHIN THE SAID PROVINCE.”

In the same manner, and almost in the same words, all the charters of incorporation and government (which acts are to be distinguished from the original grants of the lands and territories) make the same distinction—stipulating expressly for the payment of all *imposts, subsidies, and duties, according to the law of merchants*; but as to the lands, tenements,

tenements, and hereditaments, *within the precincts and jurisdiction*, leaving those exclusive, as objects of the taxation of the several legislatures which are respectively thereby established; with power to ordain and establish *all manner of laws*, to impose taxes, and to assess and levy money on the lands and hereditaments within their respective precincts.

2. As the liberty and power of *internal* legislation was both intentionally and expressly granted to the Colonies under this distinction, and so understood, “ * *as far as the crown could or might grant* :” So the exercise and administration of government towards these people, hath been, for a century and a half, conducted *on this plan*; always imposing external or port duties; but never directly laying internal duties and taxes on the dwellers and inhabitants of those Colonies, for their lands, tenements, hereditaments, or chattels, or on their transactions within the precincts of the jurisdictions of their several territories.

The Colonies having been used to this distinction, by the course and practice of government, have, *in their reasoning*, marked

* Charter of Virginia.

an essential difference in the nature of the thing.

Whatever tax or duty is imposed on any property imported into their country, is indeed annexed to *that property*, but not upon them, either in their rights or persons, until they *choose*, by purchasing that property with the tax annexed to it, *to annex that tax* also to themselves. But this they used to consider as *an act of their own consent*.

Whatever tax is imposed on any property which, within the precincts of their jurisdictions, is immediately and intimately united to their persons and rights: such tax must be paid, *without any interposition of their own will*.

The first is *external*, and annexed or not, at their own will: the second is *internal*, and absolutely annexed to what is inseparable from them.

Marking this essential difference in the nature of the thing—whatever right they can be supposed to have of taxing themselves, even *although it were exclusive*, within the limits and precincts of their own jurisdictions; such right is limited by those very bounds, and cannot go beyond low water mark.

mark. The acting power of the empire of Great Britain comes up to this line—and hath, as I showed above, a right (not bounded by any of the internal rights of the Colonists or Colonies) to exercise such empire external to them, both in regulation and taxation, as all other states have and do exercise.

From the principles of Colonial Government above stated, as they are found established in right and true policy, it also follows, that all the executive offices, from the supreme civil magistrate, as locum-tenens of the King, down to that of constable and headborough, must *of right* be established with all and the like powers, neither more nor less than as defined by law and the constitution, as they are established in Great Britain; and all these offices are thus, *de facto*, so constituted in the Colonies.

From the principles above, it is of right derived, that the judicial offices and courts of justice, established within the precincts of the said communities, have all those jurisdictions and powers, “ * as fully and amply, “ to all intents and purposes whatsoever, as

* Law of New England, confirmed by the crown, October 22d, 1700.

“ the courts of King’s Bench, Common
 “ Pleas, and Exchequer, within his Ma-
 “ jesty’s kingdom of England, have, and
 “ ought to have ; and are empowered to
 “ give judgment, and to award execution
 “ thereupon.”

Hence also it is, that by the possession of the great seal of the province, delivered to his Majesty’s governor, and by the exercise of the powers thereof—there is established, within the precincts of each respective jurisdiction, all the same and like powers of Chancery (except where by charter specially excluded) as his Majesty’s Chancellor, within the kingdom of England, hath, and of right ought to have, by delivery of the great seal of England : and hence it is, that all the like rights, privileges, and powers follow the use, exercise, and application of the great seal of each Colony or Province, within the precincts aforesaid, as doth and ought of right to follow the use, exercise, and application of the great seal in England.

It is from the right of an establishment of *internal intire jurisdictions*, as aforesaid, to which the subject in the Colony is amenable in all his rights and actions, and through which his service and allegiance must be derived to the crown—and from which *no*

appeal lies, in criminal cases — that it hath been conceived, that the Colonist cannot be removed from the jurisdiction to which he is amenable, so as to be made amenable to any jurisdiction * *external and foreign* to his natural and *legal residency*; to which such foreign jurisdiction he may be thereby transported, and under which he may be brought to trial, and receive judgment, contrary to the rights and privileges of the subject, as declared by the spirit and intent, and expressly and specially by the sixteenth section of the Habeas Corpus act: And that if the person of any subject, within the said Colony, should be seized or detained by any power issuing from any Court, without the jurisdiction of the Colony where he had his *legal residency*, it would become the duty of the courts of justice, within such Colony, to issue the writ of Habeas Corpus. This is said of the execution of justice, in the ordinary course of it: But from the nature of the principles above led up to, this peculiar internal judicial jurisdiction, *cannot exclude* the exercise of the *sovereign remedial power* of the governing state as above described.

* A doubt has been raised against this proposition, from the following right, *de facto*; viz. that the Chief Justice's warrant reaches any part of the British dominions; and that it is a jurisdiction *not foreign* in any part of them.

Although, for the same reason, that there were originally no laws in Rome made for the punishment of parricide; there are no laws in being, or as yet made, whereby the supreme power of Great Britain may guard itself against such treason and revolt, as it cannot get punished in the Colonies; namely, because such crimes were not in Rome, and are not as yet in the Colonies known, or conceived to exist: Yet if any such acts of treason and revolt should be committed in the Colonies, and such should be, at the same time, the general spirit of the Colonies, that justice could not be done thereupon—the *supreme sovereign power cannot remain, nay, it cannot exist any longer, without its remedy; and therefore hath a right to such.* When I say, there are not as yet any such laws in being, as can regularly take the subject from his internal jurisdiction, and bring him to Great Britain to be tried—I do it as I think that the old statute of Henry the Eighth, made for the trial of treasons committed out of the realm—is in like manner, as I have above described the supreme power of the mother state to be, limited by the creation of these colonial intire jurisdictions, who have acts and laws (to which the crown hath consented) for the trial and punishment of treasons within themselves; And because I think, that the applying the
purview

purview of that statute, which was made to bring *subjects of the realm*, who had committed treason *out of the realm* (where there was no criminal jurisdiction to which they could be amenable) to trial within the realm, under that criminal jurisdiction, to which alone, by their legal resiancy and allegiance, they were amenable, does not stand with the case of a subject, not of the realm, whose *legal resiancy is without the realm*, and within another jurisdiction, and who is, by that resiancy, and by his allegiance, amenable to that jurisdiction, authorised to try and give judgment upon all capital offences whatsoever, *without appeal*: And because I do not think, that the court erected by act of parliament, in the 11th and 12th of William III. c. 7, for the trial of piracies, felonies, and robberies committed in or upon the sea, or in any haven, river, creek, or place, *where the admiral has jurisdiction*, does any way affect the case I stated. Nor does the fourteenth section of that act, (directing that the commissioners, of whom such court consists, may issue their warrant for the apprehending such pirates, &c. in order to their being tried in the Colonies, *or sent into England*) any way supercede the jurisdictions of the courts in the Colonies and plantations, and authorise the taking such pirates as criminals, *from those jurisdictions*;
because

because this statute respects *crimes* committed in such places only “ where the admiral has “ jurisdiction,” *and cases* to which the jurisdiction of those provincial courts *do not extend*.

From the rights explained by this line of Colonial Government to be established as above, it is derived——that in like manner as “ the command and disposition “ of the militia, and of all forces by sea “ and land, and of all *forts* and places of “ strength, is, and by the laws of Eng- “ land ever was, the undoubted right of “ his Majesty, and his royal predecessors, “ *Kings and Queens of England*, within his “ Majesty’s realms, and dominions ;” in like manner as the supreme military power and command (so far as the constitution knows and will justify its establishment) is inseparably annexed to, and forms an essential part of, the office of supreme civil magistrate, the King : So in like manner, in all governments under the King, where the constituents are British subjects, and where the communities are British, *having political liberty* ; the supreme military command, within the precincts of such jurisdictions, must be inseparably annexed, and is *de facto*, to the office of supreme civil magistrate, his Majesty’s vice-regent, lieutenant, or locum-tenens, in what form soever established :

ed: So that the King cannot by any commission of regency, by any commission or charter of government, separate or withdraw the supreme command of the military, from the office of supreme civil magistrate, either by reserving this command in his own hands, to be exercised and executed, independent of the civil power, nor by granting a distinct commission to any military commander in chief, so to be exercised and executed—but more especially, not within such jurisdictions where such supreme military power (so far as the constitution knows, and will justify the same) is already granted and annexed to the office of supreme civil magistrate. Nay further, the supreme and sovereign power of the state, *while the Colonies remain and act as subordinate, and as what they are*, cannot establish any law martial, or military command, which may supercede and not be subject to the supreme civil magistrate, within the respective precincts of the jurisdictions of such Colonies, and plantations—Because, if it could, then (while openly, and according to the rights of the crown, and the liberties of British subjects, it appeared to establish a British constitution of political liberty) it would establish a military power and despotism—which implies a contradiction. This state of rights, however, which, while the empire is safe; while

while the Colonies remain in the due order of their subordination, and act as what they are; excludes all such superceding power; cannot bar that superintending sovereign power from exercising, in cases of extreme necessity, a dictatorial, or censorial and remedial power, which all states must have within them, *nequid detrimenti capiat respublica*, and that the union, vitality, and efficiency of the supreme empire may be preserved and maintained. By the very conditions under which the supreme sovereign power of Great Britain is bound to protect the Colonies from outward danger, and under which it is bound to preserve them united, and subordinate to the empire—it must necessarily have a right to exercise and exert a supreme military power; which goes over and supercedes all other, whenever the case which requires it, comes into existence.

The doctrines which derive from the analysis above made, tried also by applying them to the fact in the constitutions of the Colonies, do establish the empire of Great Britain as sovereign and supreme over the Colonies, *in the intendment and remembrance of law*, in all cases whatsoever; and in the actual exercise of it, in all cases which are necessary to its being, as such. They at the same time fix in the most perfect security, the *free-will absolute of the Colonies*,

Colonies, so far as it is consistent with a subordination. As they do not give up any of the rights of the supremacy of Great Britain ; as they do not break down any of the barriers of the liberties of the Colonies : I will from them venture to define the empire of Great Britain to be, in jurisdiction and legislation, supreme over the Colonies, in all cases whatsoever, except where it is necessarily limited by its own power in the creation of external communities, having political freedom ; and that the Colonies have of right, internal government, both in jurisdiction and legislation, perfectly free in all cases whatsoever, except in such as break that subordination, which Colonies of British subjects, settled on the lands of the mother country, owe to it, and to its government.

While THIS LINE OF COLONIAL GOVERNMENT defines the precise relation which subsists in nature, and right, between Great Britain and her Colonies ; I hope Great Britain will not disdain it, in that it does not give more power to its empire, than even God himself hath over the human system. : I hope the Colonies will not revolt at it, in that it does not give them more liberty than that which the human system enjoys, in its subordination to the supreme Being. *This line, not only in its general theory establishes the rights of the empire, and secures the liberties of the people ;*
but

but in practice and in its application, (as hath been seen above) goes to all cases wherever it becomes necessary, without endangering those liberties ; as it would imply a contradiction, whatever may be its power, that it should have a right to destroy the least of them, while the Colonies remain as what they actually are. This line, in theory, in practice, and in every application of it, gives the Colonies an intire internal jurisdiction, and perfect freedom of legislation, so long as they remain, *as free, so subordinate*, separate communities.

This hath been the line of the administration of the government of England, towards the Colonies, and of their obedience towards its supreme empire, for near a century and a half. There have been aberrations on both sides of it, from both parties ; but there never was on our part an express departure from it, until when, in the year 1764, we exerted a right of exercising *external government* over the Colonies, by imposing *internal taxes* on them : nor on the part of the Colonies, until since the year 1768 ; they not only in doctrine, but by deeds, denied the right which Great Britain hath, of imposing *external taxes*, on property passing into, or coming out from their jurisdictions and precincts, by imposts, customs, and
other

other port duties levied and paid on the boundary of its own jurisdiction; nor until, by asserting that the ministers and officers of the crown, administering the government of the Colonies, are the servants (exclusively so understood) of the Colonies, and should therefore be paid by them alone; until by actions in maintenance of these exclusive claims, their conduct went to the subversion of *colonial*, and to the erection of *national government* within their jurisdictions.

It will be "an infinitely more arduous task, if it be possible," to restore peace between us, than it hath been found to be, to draw *this line*; if in the spirit of our politics we do not Both sincerely, in good faith, and in perfect confidence return to it.

When Great Britain saw that she had exceeded in her power, and had advanced beyond this line; the good humour and honour of the nation, repressed back its step and returned to it.

The Colonies have now in their turn advanced beyond this line—when coming forth, without the precincts of their jurisdictions, they obstruct our national government in parts where we have a right to exercise it: when fixing in these parts, external to their communities,

communities, *posts of claim which they fortify against our rights*, even within our own jurisdiction—when they say that we have no right to lay external taxes—when they resist the execution of those acts of parliament, which should collect them on the boundaries of our acting jurisdiction—when they attempt, as above explained, to erect *national government* within their peculiar jurisdictions: The Colonies (I say) have in their turn exceeded, and

“ At one slight bound, have overleap'd all bounds.”

Notwithstanding, therefore, the universal prevalence, which *fears, jealousies*, and other *feverish* passions have given to these opinions *: notwithstanding the present unanimity

* The case stated, in the course of the argument, goes only to the matter of right: But as there are other reasonings, as to the extent to which this right may be justly carried—it will not be amiss to observe here, by way of note, the line and effect of that reasoning.—They say, with some ground of justice, that where, and in every case, in which we exact, and enjoy, *the monopoly* of trade with the Colonies, as that goes to the deriving from their commerce every possible profit which can arise; the super-adding taxes to this utmost profit, is absurd and unjust. With whatever truth this may be said, it is not more absurd and unjust in the Colonies, than what has been constantly done in the East India trade, &c. in England. But if from reasons of expediency, and from a spirit of moderation, Great Britain should give up the exertion

nimity with which the Colonists; and Colonies in their collective meetings, make these claims of exemption as rights; I am sure, if ever time and season would give them opportunity of returning to their old affections; if they would refer this point to their own honour; if they are sincere in saying, "That all which they desire, is to be placed on the standing, on which they were originally put;" they also in their turn would fall back to this line, *as being that on which they originally stood*. This, if some strange combination of events does not give rise to new systems of things, is *the only safe line of peace*; here must the *first step* of PACIFICATION be fixed.—But if all temper is lost; if all that trust and confidence, with which men can meet in business, is destroyed; if the spirit of peace is flown;

exertion of its right, in all cases whatsoever; *wherein the monopoly operates*; are the Colonies aware how much more, and with how much more inconvenience to them, Great Britain might avail itself of a revenue, by laying duties on those articles, in which they are permitted a trade unrestricted by any monopoly? If Great Britain was to impose duties, to be paid at the ports of the Colonies, on the exportation of rice, corn, and all other commodities with which they are now permitted to trade with foreign nations and their colonies; the argument of the monopoly could not operate in bringing forward any right to oppose to this exertion: and I am sure they would not know how, in prudence towards their own interest, to avoid the payment of such duties.

this *old standing*, as they call it, can be no longer the basis of the establishment of the British empire, in its administration of the government of its Colonies: We must look for *some other line of pacification, on some other ground.*

No other line of pacification remains, than either that the Colonies be admitted into the Parliament of Great Britain by a general *British Union*; or that they have a *Parliament of their own under an American Union*. There is no other part in the alternative, than that they be put either in the situation of Scotland, or in that of Ireland.

A British Union of all the British dominions, by admitting the American Colonies into parliament, has been now for near twenty years repeatedly recommended to this country, by those who knew the circumstances of both countries, as they stood related to, and connected with each other. The first part of this work contains, a full explanation of the grounds and necessary procedures of this measure. When it was first proposed, within the period of the last war, it might have been easily, and would have been cheerfully carried into execution. Ten years ago it was not yet desperate—but the spirit of this country disdained the idea:
and

and the government of it never will or can engage in any such measure, which the spirit of the people does not take the lead of and demand. * We wretched empirics who have entertained the idea, and have written about it, have been treated as Utopians.—This interesting and decisive crisis of the affairs of this country, wherein a British Union might have been formed, has been treated like Friar Bacon's brazen head in the puppet-show.—The nation, whom it concerned to watch it, slept while it pronounced—*Time is to come.*—*Time is.*—They are awakened now with the breaking up of the charm, and have only heard—*Time's past.* The Colonies now in their turn *have learnt* to renounce this union. To obviate even the offer of it, they previously reject it: they say *it is impracticable*, and will not hear of it. This symptom (a mortal one there) showed itself early in the Roman empire, when the provinces found it their interest, and therefore took the spirit to † reject the communion

* See two letters at the end.

† Ipsa denique Julia [lex lata est] quâ lege civitas est fociis & Latinis data. Qui fundi populi facti non essent, civitatem non haberent. In quo magna contentio Heraclienfium, & Neapolitanorum fuit: cum magna pars in iis civitatibus fœderis sui libertatem, civitati anteferreret.

Cicero orat. pro Balbo, § r.

of the city of Rome, even when offered to them ; preferring a subordination, *which they found could not be very strictly exacted of them*, to the being united in all the rights, privileges, and pre-eminences of the city.

If our Colonies by any new-excited property of attraction amongst themselves, are drawing together in an *American Union* : If we find this American attraction to be *electrical* ; having learnt how this is raised by friction, we should know that the application of force will the more encrease its power. *If this then be the case*, that being let alone, they will form an union ; and that being agitated by opposition *from without*, they will the sooner, the closer, and the firmer coalesce ; what remains for us to do, but just that very thing, which if Philip of Spain had done, the provinces of the Netherlands would not have fallen off from his government ? If he had put his own government, in that spirit and temper of it which was practicable, *at the head of an union*, which he might have seen he could not prevent, *his lieutenant might have been at this day Stadtholder* of the united provinces.

It would, upon the whole of things, have been happy even for the provinces themselves, had their government taken at first
 6 this

this monarchical form. The wise and temperate amongst them saw this; and when they separated from the Spanish government, they sought to put themselves under the English in this very form *. Had it been the spirit of the English policy, in queen Elizabeth's time, to have established her *lieutenant as a Stadtholder*; had it even been the temper of those whom she sent to command in these provinces, to have acted in that spirit and character; these provinces might have been at this day parts of the British dominions, under a stadtholder, lieutenant of the kings of England.

Such hath been invariably the course of human affairs, that, wherever a country hath been originally divided into a number of small free independent states, *the necessity of a common referee*, who hath power sufficient over all to carry into execution those regulations and remedies which are required by all, hath always obliged these several states to create some one such referee amongst themselves, or to call in one from without. If this establishment is formed on preconceived *modes of policy*, the government may be that of *laws*: If it be only dragged into existence by power and force, the establish-

* Vide Appendix, N^o III.

ment must be, as it always has been, *the government of men*. Nor can the community arrive even at that wretched state of peace, founded in a deprivation of freedom, but through a series of the most depressing miseries, in the dreadful trial of war.

If Great Britain and her Colonies are come to that dreadful crisis, that they are no longer to remain *on their old standing*: If there cannot be *a British union*: may the Americans see and be convinced, that the safest and happiest form of *an American union*, is that * whereof a British Stadtholder, Lieutenant of the crown, may have the lead, command, and government, under such establishments as derive from preconceived

* Vide Appendix, N^o III. Notæ breviores tangentes Statum & Gubernationem Provin. Unitarum sub auspiciis Eliz. Reginae, 1589.

This paper gives a model in fact, that may explain what I suggest here only in theory: and does, at the same time, point out *what may come in future event*, if the present crisis is not wisely and firmly managed. I had intended to have added a commentary on these notes, applying them to the state of our provinces and Colonies; but the more I have read them, the more clearly I saw that such was unnecessary.

That the publick, whom it concerns, may also see, what were, in the year 1754, the sentiments of our Colonies, collected in an authentic manner, on this subject, I have also added a * plan proposed and unanimously agreed to in congress, and sent over to Great Britain.

* Appendix, No. IV.

modes

modes of policy, before it shall be driven on by force! And may Britain have the temper, the spirit, and the wisdom, *to take such lead!*

As to the forms of such establishment, it will be time enough to speak to those, when the spirit of policy shall call for them—What concerns all, should be considered of all.

I have here stated that alternative in which the politics of this kingdom, respecting America, must be engaged, if we quit *the old standing*: Yet as I have, in every thing that I have said in public, in every thing which I have written or done, laboured to set matters on *that ground*—and as I still hope (if God, for the great ends of his providence, has not decreed otherwise) that we may fall back again to it: I rest all my hopes and wishes for the welfare and existence of the British empire on that alone. The old boundaries are known, and are those of peace—any new ones must be set in blood.

...shall be driven on
...and my Britain have the tem-
per, the power, and the wisdom, to take the
lead in the world.

As to the terms of such establishment
it will be time enough to speak to those
when the spirit of policy shall call for them
—What concerns all, should be considered
of all.

I have stated that alternative in which
the power of this kingdom, respecting
America, will be engaged, if we are to
allow it. For as I have in every thing
that I have said in public, in every thing
which I have written or done, laboured to
set hearts on fire, and as I still
hope (if God, for the great ends of his pro-
vidence, has not decreed otherwise) that
we may all back again to it: I tell all my
loved and vices, for the welfare and ex-
istence of the British empire on that alone.
The old boundaries are known, and we
hope of peace—any new ones must be let
in blood.

POST

P O S T S C R I P T.

SINCE I had written the foregoing treatise, I have received the Instructions of the Provincial Deputies in Pennsylvania given to their Representatives: together with the *argumentative part* of the draught of these instructions, published separately, as * *an Essay on the Constitutional Power of Great Britain over the Colonies in America.*

The declared purport of these Instructions, and of this Essay, are the same as that of the foregoing treatise; namely, “† the tracing
“ a line between the rights of the mother
“ country, and those of the Colonies;” to
the end, that they, “‡ attaining some de-
“ gree of certainty concerning their lives,
“ liberties, and properties,” “|| Harmony
“ between Great Britain and those Colonies
“ may be promoted, and established *on a*
“ *constitutional foundation:*” such, as that

* Printed in Philadelphia, and reprinted by J. Almon, London 1774.

† P. 33.

‡ Preface.

|| P. 24.

“ they

“ they and their posterity may for ever remain *subordinate to and dependent upon* the parent state:” “ * Which submission, (they say) our reason approves, our affection dictates, our duty commands, and our interest enforces.” Under this idea, the Instructions and the Essay demand, from me at least, the most attentive examination. These professions coming from the whole body of a serious people, in so serious a crisis of affairs, deserve every attention that every man who wishes peace to the British empire can give them. The draughtsman of these papers has, in a former work, shewn himself to be so ingenious and acute a reasoner, so able a writer, and is so universally looked up to in America, as an honest and conscientious man, that every thing which he writes on this subject, deserves to be thoroughly and deliberately examined.

The line which is here laid down in the Instructions, and described in the argumentative part, in the Essay, runs a very different course from that which my analysis hath led me in: and I am *sorry* to see it proposed *under such a questionable form*, that, I fear, it is never likely to become A LINE OF PACIFICATION, as not being, I think,

drawn on *constitutional ground*; nor standing on the true "boundary." It appears to me to come forward *beyond* this boundary, not simply as a defence covering the rights and liberties of the Colonies, but erected as an *advanced post*, fortified against, what, I think, the true and constitutional sovereignty of the mother state. I shall therefore endeavour to state and examine it, both on its own principles, and by those which I have, by a careful analysis, been led up to.

The idea of this line has been formed under contemplation of some " * original contract" between Great Britain and the American Colonies, on reciprocal terms of sovereignty and subordination; which contract *actum habens transeuntem*, hath never been defined, never mutually understood, so as to be fixed; and which is, at length, by a total misunderstanding, come to an absolute misalliance: Which, therefore, according to this idea must be now *de novo* formed, by " † a mutual compact," on intirely new ground, suiting the present relation of the contracting parties, " not to be altered in " future ‡ without mutual consent."

In order to have *any ground whereon* to draw this line, various preliminaries are re-

* P. 95. † P. 25. ‡ P. 27.

quired

quired to be settled. *Great Britain must make sundry renunciations* of powers said to be assumed beyond right: *its legislature* is required to *repeal many of its acts*, as inconsistent with the *constitutional foundation*; whereon the reasonings and the instructions of the provincial delegates determine that this line must stand,

I shall state and examine these preliminaries, as contained in this present *ultimatum*, which is never to be “ * relinquished nor intermitted;” “ † every modification and qualification of which is “ inadmissible.”

1. The first article requires a renunciation, on the part of Great Britain “ of all “ the powers under the statute of the 35th “ of Hen. VIII. c. 2. “ An act for the trial “ of treasons committed *out of the King's “ dominions.*” It would be unworthy the importance of the present consideration; to cavil at the extent given *in words* to this requisition; the delegates can only mean, *so far as concerns the subject resident within the jurisdictions of the Colonies.*

Those who think there is a doubt (amongst whom I have stated myself to be one) whe-

* P. 26.

† P. 27.

ther the purvue of this act, (made before there were Colonies, and having respect only to such situations, *out of his Majesty's dominions, where jurisdictions were not established* for legal remedy, and execution of justice, in case of treasons so committed) was ever meant to extend to any parts *within his Majesty's dominions*, where jurisdictions were erected for the trials of such; and from the judgment of which there lies no appeal in such cases; may think this requisition unnecessary. But if, couched under this demand, the Colonists expect, that Great Britain should renounce all means of *remedy* against treasons committed, while the governments and judicatories of the Colonies cannot, or do not operate against such overt-acts, as go to the denying their dependence on, and subordination to, the mother country—they can be considered only as requiring the state of the mother country to renounce the powers and *right of self-preservation*; and as requiring it *at the moment in which* the supposed conduct of the Colonists puts the *regions of the Colonies* in that very predicament which was the ground of this statute: For if treasons are committed in the Colonies, and abetted, or at least not restrained, and punished by the authorities established there; that state of things must be considered as an absolute dissolution of their government,

government, so far as it derives from the crown, and they stand in the case to which the *purvue* of this act goes.

In the ordinary course of *colonial* government, and in ordinary cases, where and when the powers of the crown can act, and have legal remedy against treasons; it is surely of the true spirit of colonial government, that the subject resident in the Colonies should be tried by his peers, within their own internal jurisdictions, to which they are amenable, and from which there lies no appeal in criminal cases.

The next *renunciation* required of Great Britain is, (as there expressed) of all powers of *internal legislation*. Instead of objecting to the expression, I will take the intent of it: It means all power of *foreign legislation*, acting *from without*, on the *internal rights* of the community over which such legislation, *external* to that community, is exercised.

I cannot here add to what I have already written on this point, either in describing the difference between internal and external, provincial and national legislation; or in marking the precise boundary between the rights of government of Great Britain, and those

those of the Colonies. As I have defined and described *colonial government*, I have there shown, that *in the intendment and remembrance of law*, the power of parliament, as a *supreme censorial or remedial power*, must be supposed to have a right to go to all cases whatsoever; yet that in the ordinary exercise thereof, there must be of right "a line" beyond which her authority cannot extend;" and that so long as the Colonies continue (as what they are) subordinate communities, having political liberty; this power must be bounded by those internal rights, which that internal political liberty requires, as essential to it. But if, when the Colonies talk of a "boundary," they go *in their intendment* to a claim of * "an exclusive right of internal legislation," which is to exclude the power of parliament in all cases whatsoever;—they forget "the old standing," on which they were by "original contract" first put; and on which they have always hitherto stood. In the room of *colonial*, aiming to erect a *national government* within their jurisdictions, they themselves bring forward the necessity of the exertion of *provincial*, or external government, on the part of the mother country.

The next *renunciation* required of Great

* P. 72.

Britain

Britain is, that of *all power of imposing taxes and duties, both internal and external*. Great Britain has repealed the act, by which it did exert that power of laying an internal tax : I believe the Colonies perfectly understand that that point is given up for ever : But if they cannot enjoy their victory without the triumph, they must wait until, conquered, we surrender at discretion. It is not of the temper, nor of the spirit of pacification, to require this open test of humiliation from us.—But even the open renunciation of the right of laying internal taxes, would not suffice—They pass the line of their jurisdiction, and advance upon us in our own empire ; requiring of Great Britain a renunciation of a right *to impose, within its own jurisdiction, taxes and duties*, external to the jurisdiction of the Colonies. They, who will not, in the rigour of their jealousy, suffer Great Britain to conceive, that cases may arise in which it may have a right to call for aid, by imposing taxes within their *exclusive jurisdictions* ; advance upon us with a declaration, That their rights go, even *within our jurisdiction, to the excluding* Great Britain from imposing taxes and duties on any property passing the bounds of its own jurisdiction, if such property passing out of their jurisdiction is, or going to pass into, is going to be, *their property*.—As I find no reasons

reasons either in the Instructions, or in the Essay, whereon this claim can be grounded; I have again carefully read over that very ingenious composition, *the Farmer's Letters*; and I do declare, I have not acuteness sufficient to find any ground, or any reason whereon the claim can be founded; if I could, as I wish sincerely to examine it, I would candidly and fairly state it. On the contrary, every reasoning which I can draw either from theory or practice; from the principles of the British constitution; from those of the establishments of the Colonies; or from acknowledged and allowed exertions of government; establishes the right which Great Britain has to lay port duties, and calls for and justifies the exertion of it. Nay further, the Colonies themselves have constantly exercised and exerted a right of *the same kind*, on their own boundaries, by an impost laid and collected on goods coming from without, and passing those boundaries. I cannot therefore but hope, that *this claim* is but *an out-post*, which they mean to maintain only in order to parly and treat for the main works—It stands within the *line of the acting* jurisdiction of Great Britain, and, unless they mean to render all pacification impracticable—they must “relinquish it.”

Great Britain has yet another *renunciation* to make—It must renounce all power of regulating and restricting the trade of the Colonies, except on such principles, and under such limitations, as are laid down in the Instructions, and in the Essay *. “As to the
 “power of regulating trade (say they) our
 “opinion is, that it is legally vested in parliament, *not as a supreme legislature over
 “the Colonies, but as the supreme legislature
 “and representative of the parent state, and
 “the only judge between her and her chil-
 “dren, in commercial interests, which the
 “nature of the case, in the progress of
 “their growth, admitted.”* They submit to these restrictions, as imposed upon them by *the representative of a sovereign state* (acting in parts foreign to its jurisdiction of legislature) without reference had to the participation of their will, in a similar manner as the King acts in foederal and foreign transactions †, *without the consent of the nation*; and as he did (for so great pains are taken in the Essay to state it) originally in matters of commerce. They had rather be supposed to submit to this sovereign, as a superior power, imposing unequal conditions on an inferior, than to allow the parliament of Great Britain to derive its right of so act-

* P. 110.

† P. 113.

ing, from a supposition of its being a supreme legislature; which supposition might be construed to include their will. * “ Thus
 “ we maintain, that with regard to FOREIGN AFFAIRS, the parent original
 “ state is, ‘ the delegate or representative’
 “ of the intire dominions; ‘ the sovereign
 “ power *quoad hoc*, is vested in her. Her
 “ acts, *under this power*, ‘ irrevocably bind
 “ the whole nation.’ But yet this power
 “ by no means implies a *supreme legislature*.—“ It does not infer supreme legislature over us, that the *limited* authority of King, Lords, and Commons, is
 “ used in *cloathing regulations of trade, with the form of law*. The Commons joining
 “ in the law is not material. The difference is only in the mode of assent: *theirs*
 “ is *express*; ours is *implied*, as the assent of
 “ the whole nation is in the preceding instances.” They conceive the exercise of this power to be, *an act of state, not an act of parliament*; although it be exercised by *statutes* made in parliament—and although the consent of the Lords and Commons makes it such.—They consider this consent to be a mere matter of form, given indeed by the two branches of parliament *expressly*, but not material, any more than their consent,

* P. 125.

which is *implied*. When they “ * concede
 “ that this power is legally vested in parlia-
 “ ment,” and submit to its over-rule, it is
 on this prudential consideration, That even
 “ † if these Colonies were sovereign states,
 “ they would in all probability be restricted
 “ to their present portion.” Under this
 idea of the right of parliament, they con-
 ceive themselves on one part, and Great Bri-
 tain on the other, to be two contracting par-
 ties, and themselves as bound *fœdere ine-*
quali; yet on as good terms as, *in the present*
progress of their growth, they could have
 obtained, were they independent sovereign
 states. The idea of such a fœderal com-
 pact may suit those, who have accustomed
 themselves to conceive of the Colonies *as*
states, having both external as well as inter-
 nal sovereign jurisdiction; that is, *as states,*
sui juris: But to those in whose minds the
 idea of Colonies arise, as being *not states,*
 but *communities within the state* of Great
 Britain; all these reasonings, and all the
 ground whereon they stand, vanish with the
 baseless vision. The parliament makes rules
 “ ‡ by statutes,” which are *acts of parlia-*
ment, to regulate and restrict all kinds of
 commerce which is carried on within the
 dominions of the empire;—and also for the

* P. 117.

† P. 117.

‡ P. 125.

raising a revenue therefrom, in return for the protection which government gives to it. It may in some of these laws, as a matter of fœderal prudence, have respect to the *pacta et conventa*, in which it stands related to some foreign sovereign states : But even this consideration cannot operate either on its right or its power, with respect to communities included in, and being dependent subordinate parts of its empire. It acts in every case as supreme legislature (the *commune concilium regni* :) And the power which is conceded “ to be legally vested in parliament,” is vested in it *as such*, and must be obeyed *as such*. If the supposition be true, that its acts, as acts of state, operate over the Colonies, without reference had to their implied will, “ which is not material,” in matter of regulation and restriction of trade ; it must on the same supposition operate to the raising a revenue therefrom—without that consent. However, let us describe the power by whatever theory we may ; the fact is, as the Essay confesses *, “ That this power of regulation is the only “ band that can hold us together : and it is “ formed on one of *those original contracts* “ which only can be a foundation of just “ authority.” Parliament therefore cannot

* P. 123.

make the renunciation required under this head, without risking the dissolution of the empire; which parliament itself cannot be justified in doing. A revision of the whole system of the laws of trade, and of the regulations and restrictions respecting the trade of the Colonies and Plantations, is necessary. I have in part endeavoured to explain this; and, if I had any hopes of the least attention being given, at this hour, to these matters, I would further endeavour to explain it. And I shall always think that, whenever such revision shall be undertaken, every attention and deference ought to be paid by parliament to the representations of the Colonies, as a matter of justice as well as of prudence: for I have always thought they ought to be actually represented in that high court.

II. Great Britain having made renunciations of the several powers as above required: the *Parliament* also *must* repeal several of its *acts*; and first, those respecting the military establishment, quarters, &c. in America. I, who think that, both by the constitution and laws of the empire, the military is, and must be always, *as the force of the community*, subordinate to the supreme civil magistrate—to *the King as such*;—and in the Colonies, to *the Governor as his lieutenant*,

tenant, or *locum-tenens*: I, who have always thought, and do still think, that no letter of a secretary of state, nor any executive power whatever, can alter this *fundamental constitution*; who know no law that gives a supreme command to any military commander, paramount to the supreme civil magistrate in the Colonies; who think that the governor and captain general of each province must have, as he hath, “ the command of all “ forts and forces” within his jurisdiction; do not know what laws in this case are to be repealed. I, who have, almost singly and unsupported, endeavoured, both in and out of parliament, to bring forward regulations that should fix the practice according to law and the constitution, and who shall for ever act and persevere in the same endeavours; must, on this occasion, on examination of, and in answer to the claims here made, declare, That where the defence of the whole empire against hostile attacks from without, or the preservation of it from subversion, and dissolution arising within, calls forth the supreme power; the King hath, of right ought to, and must necessarily, have a supreme military power which goes paramount over the whole, with every attendant power of *law martial*, that is necessary to the maintenance and efficiency of such.—This is a *dictatorial* power lodged in the crown, to be exercised, (*jussu populi*,)

under the authority of parliament, *ne quid detrimenti capiat respublica*. The defence of the empire, and the support of the state, "is * a power of a preserving protecting nature," and is a trust reposed in the King: He must therefore have all powers necessary to the exercise of that trust.

As to the laws for quartering and providing for the troops in their quarters, and on their march in America; they were (I have a right to say) conceived and framed with a special regard had to the *internal* legislation and jurisdiction of the Colonies. If there have been any alterations made, which depart from the original idea on which they were framed; it hath arisen from that, that the legislatures and jurisdictions of some of the Colonies have endeavoured to obstruct, instead of making regulations for the due execution of, the public service.

Any requisition therefore of repeal, in such case, becomes a demand on Great Britain to lay down her arms, to surrender at discretion, to receive such terms as shall be dictated to her, and that in the moment that the Colonies are on the point of advancing with *their arms* in their hands,

As to a repeal of the establishment of the courts of admiralty, I, who have never approved the rigour of them, where not necessary; and have, where it was my duty so to do, given my opinion against such; must say, that while the conduct of the Colonists renders this every day *more and more necessary*; that very necessity, if nothing else would, justifies the measure, and renders it impossible for government (unless it means to decline all power of regulating and restricting the trade of the Colonies) to repeal those acts which establish those courts. If any future practicable measure can be found, (such as creating regulations which shall execute themselves, which I think there may be) then I should hope to see the rigour of these courts abated in many instances. But these are measures of peace, and not (I fear) of the present hour.

As to the power in parliament of altering, and even of dissolving, the constitutions and charters of government, whereon the Colonies have settled and been established, I have said, and explained how I think, according to the principles of *colonial* government, that, exerted and exercised in the ordinary course of government, it would rather become a matter of power, than of right—*like the perpetual Dictator, it would be a tyranny*

ranny. But then, from such principles to draw the conclusion, That there does not exist in the sovereign state, in the King, Lords, and Commons, assembled in parliament (as the *commune concilium regni*) a *supreme censorial or remedial power of self-preservation*, against such principles of revolt or dissolution as may arise in the Colonies—is directly incompatible with the idea of colonial government. Any repeal of any *necessary acts* of this power, can never be required, by any persons who do not mean, on the destruction of colonial to erect national independent government. Whether *some of the acts* of this nature *were absolutely necessary*, might have been a question, if the subsequent acts of some of the Colonies had not since put it out of all question.

The ground thus cleared, if, on these propositions, it is to be so cleared; and the mother country, and her Colonies, having *thus settled the relation* in which they are to stand and to treat—if it is to be so settled for the future; all that follows is peace,—and I hail the promised omen.

The propositions which hold out *the settling a revenue in lieu of services*; and the declaration, that the granting aids and subsidies, which although of good-will, is yet

so far due from the subject, that the withholding or refusing such, when required in aid and protection of the state, is a *violation of a plain duty*; these propositions, I say, are of the very spirit and essence of our constitution; and stand on the precedents which, from the earliest times, it hath itself acted upon in its progress to the restoration of its liberties.

The fixing *a certain for an uncertain* service, is of the spirit, and was the principal purport of the *Magna Charta*. The settling the mode of that service, *by a composition of a certain income*, paid to government in lieu of this service, hath been the constant line of negotiation and compact between the King and people of our state in the best of times.

This proposal, as it comes from the whole body of the people of Pennsylvania—and may come as a general proposition from the whole body of the people of America—should be met with the most favourable eye, and deserves the most serious consideration.

A *certain income* in lieu of certain services; and a fixed and permanent revenue in lieu of all port duties, must mean a *fixed proportion*. It would be absurd to suppose this to mean
a de-

a *determinate modus* (like that settled in lieu of tithes) settled now, in the first stages “of the progress of the growth” of the Colonies, as the rate or quota, which should be deemed their just proportion in all the succeeding relations of their proportion to the mother country, and amongst one another. This income, therefore, must be so laid, in fair and equitable proportion at present, that as the Colonies encrease, it may so encrease, as still always to hold the same proportion. If the taxes which shall be laid and appropriated by the Colonies to the raising this revenue, be laid according to the present mode observed throughout the Colonies in general, on estates real and personal, and on polls; together with a tonnage to be paid by those Colonies who have a maritime interest and shipping; such tax might be duly proportioned at the outset, and would hold the same proportion in all future stages of the increase, decrease, or stationary situation of each Colony. If a land tax (in which case the quit-rents ought to be given up) rated according to the real proportionate value of lands in each province, and in each district of each province, was laid as the ground of this revenue—this too would hold the same equitable proportion as it set out with. One very material branch of this cer-

tain income might arise, in the fairest of all proportions, out of the interest of *a general loan* advanced in paper by government. But I fear, although our government has never yet been able to see the benefit and advantage which might be derived from it to Great Britain ; the Colonies see it too clearly, ever to adopt this *now*, unless they have the creation and management of it.

By these hints I do not mean to dictate or prescribe ; I only throw them out as *theoretic quæries* of what may be, from experimental knowledge, which I once had, of what might have been. But as I have been long removed from all connection of business with the Colonies, and so many changes in the affairs, interests and powers of them, have devolved in such rapid succession one upon another, I now doubt, where I once thought I knew. Of this point, however, I am certain, That if the rate and proportion of any revenue, which shall, on "*mutual compact*," be settled, *be not fixed so as of itself to follow all future relations* between Great Britain and the Colonies, under the like proportion ; this settlement, instead of an union, " will prove an unfailing and plentiful source of dissensions : " So settled as to hold its proportion, it may prove the
happy

happy source of an union that shall be indissoluble.

This first step of peace, falling back to the old ground of the *old standing*, is actuated by a spirit “ of * loyalty to their
 “ sovereign, of respect to the parent-state,
 “ and of affection to their native country :”
 And the next, I mean *their acquiescence in our still retaining THE MONOPOLY of their labour and commerce*, derives (I will hope) from a temper of unfeigned moderation. — It breathes, I am sure, that spirit. — “ † From the mother
 “ country ALONE (say these propositions)
 “ we shall continue to receive manufactures.
 “ To her *alone* we shall continue to carry
 “ the vast multitude of *enumerated articles*
 “ of commerce ; the exportation of which
 “ her policy has thought fit to confine to
 “ herself. *With such parts of the world*
 “ *only*, as she hath appointed us to deal, we
 “ shall continue to deal ; *and such commodities only*, as she hath permitted us to bring
 “ from thence, we shall continue to bring.”

The next article, rightly grounded, and conducted with temper, and a spirit of equity—with a practical, yet scientific knowledge of commerce—may become the chief

* P. 20.

† P. 20.

corner-stone in this edifice of peace ; I mean that article which proposes the settling the *courses and the bounds of colonial commerce*. I have already said so much on this head *in general* ; and there remains so much to be said, *en detail*, whenever this matter shall be taken up, between Great Britain and her Colonies ; that to speak further in general would be but tedious repetition : and to go into an inapplicable detail might hazard the doing more harm than good.

I shall here conclude this Postscript in the words, and with the sentiments of the instructions given by the provincial delegates of Pennsylvania to their representatives, by applying them to ourselves here at home :
 “ To us may it appear, at this alarming
 “ period, our duty to God, to our country,
 “ to ourselves, and to our posterity, to exert
 “ our utmost ability in promoting and estab-
 “ blishing *harmony between Great Britain*
 “ *and her Colonies*, ON A CONSTITUTIONAL
 “ FOUNDATION !”

...place in the office of power, ...
...which ... the ...
...to ... on the ...
...to ... to ...
...for this ...
...in ...
...and ...
...the ...

...the ...
...the ...
...the ...
...the ...
...the ...
...the ...
...the ...
...the ...

N° I.

I Am very sensible of the honour you do to me, both in this, and in the Address prefixed to the former editions of your treatise upon the Administration of the Colonies; and am much obliged to you for the expressions of your regard and good opinion. You say, very truly, in the beginning of your present Address, that our opinions differed on several points: but we agree intirely in our wishes, that the constitutional powers of this kingdom, and the fixed government of the laws may prevail,

VOL. II. i and

and the rights of the people be established upon true political liberty.

As to the great question of our parliament's granting to America a competent number of representatives to sit in our House of Commons, you are no stranger to the declarations I repeatedly made in the House, at the time when the repeal of the stamp-act was agitated; That, if such an application should be properly made by the Colonies to parliament, in the same manner as those which were made from Chester and Durham, and probably from Wales, it would, in my opinion, be intitled to the most serious and favourable consideration. I continue still in the same sentiments; but *I am much afraid, that neither the people of Great Britain, nor those of America, are sufficiently apprized of the danger which threatens both, from the present state of things, to adopt a measure, to which both the one and the other seem* INDISPOSED. Some of the Colonies, in their address to the crown against some late acts of parliament, have, if I mistake not, expressly disdained it; and I do not think it has been kindly received in Great Britain, when it has been thrown out in parliament, or started in any pamphlet or printed paper. The fullest conviction of its necessity, and the hearty concurrence, both of the govern-
ment

ment and of the people, are indispensably necessary to set so great a machine in motion, as that of uniting all the outlying parts of the British dominions into one system.—For my own part, I shall wait the event with concern, and shall be ready to give any assistance I can, whenever I see any practicable road opened to our safety.

N^o II.

*Letter from Benjamin Franklin, Esquire, to
Governor Shirley. Dated, Boston, Dec.
22d, 1754.*

S I R,

SINCE the conversation your Excellency was pleased to honour me with, on the subject of uniting the Colonies more intimately with Great Britain, by allowing them representatives in parliament, I have something further considered that matter, and am of opinion, that such an union would be very acceptable to the Colonies, provided they had a reasonable number of representatives allowed them; and that all the old acts of parliament, restraining the trade, or cramping the manufactures of the Colonies, be at the same time repealed; and the British subjects, on this side the water, put, in those respects, on the same footing with those in Great Britain, 'till the new parliament, *representing the whole*, shall think it for the interest of the whole to re-enact some or all of them.

It

It is not that I imagine so many representatives will be allowed the Colonies, as to have any great weight by their numbers ; but I think there might be sufficient to occasion those laws to be better and more impartially considered ; and perhaps to overcome the private interest of a petty corporation, or of any particular set of artificers or traders in England ; who heretofore seem, in some instances, to have been more regarded than all the Colonies, or than was consistent with the general interest, or best national good. I think too, that the government of the Colonies by a parliament, in which they are fairly represented, would be vastly more agreeable to the people, than the method lately attempted to be introduced by royal instructions, as well as more agreeable to the nature of an English constitution, and to English liberty : And that such laws, as now seem to be hard on the Colonies (when judged by such a parliament for the best interest of the whole) would be more chearfully submitted to, and more easily executed.

I should hope too, that by such an union, the people of Great Britain, and the people of the Colonies, would learn to consider themselves, not as belonging to different communities with different interests, but to

one community with one interest; which, I imagine, would contribute to strengthen the whole, and *greatly lessen the danger of future separations.*

It is, I suppose, agreed to be the general interest of any state, that its people be numerous and rich; men enow to fight in its defence, and enow to pay sufficient taxes to defray the charge: for these circumstances tend to the security of the state, and its protection from foreign powers: but it seems not of so much importance, whether the fighting be done by John or Thomas, or the tax paid by William or Charles. The iron manufacture employs and enriches the British subjects; but is it of any importance to the state, whether the manufacturers live at Birmingham, or Sheffield, or both, since they are still within its bounds, and their wealth and persons at its command? Could the Goodwin sands be laid dry by banks, and lands equal to a large country thereby gained to England, and presently filled with English inhabitants; would it be right to deprive such inhabitants of the common privileges enjoyed by other Englishmen, the right of vending their produce in the same ports, or of making their own shoes, because a merchant or a shoemaker, living in the old land, might fancy it more
for

for his advantage to trade, or to make shoes for them? Would this be right, even if the land was gained at the expence of the state? and would it not seem less right, if the charge and labour of gaining the additional territory to Britain, had been borne by the settlers themselves? And would not the hardship appear yet greater, if the people of the *new country* should be allowed no representatives in the parliament enacting such impositions? Now I look on the Colonies as so many counties gained to Great Britain, and more advantageous to it, than if they had been gained out of the sea, around its coasts, and joined to its land: For being in different climates, they afford greater variety of produce, and materials for more manufactures; and being separated by the ocean, they encrease much more its shipping and seamen. And since they are all included in the British empire, (which has only extended itself by their means, and the strength and wealth of the parts, is the strength and wealth of the whole) what imports it to the general state, whether a merchant, a smith, or a hatter, grow rich in Old or in New England? If through increase of people, two smiths are wanted, for one employed before, why may not the new smith be allowed to live and thrive in the new country, as well as the old one in the old? In fine, why

should the countenance of the state be partially afforded to its people, unless it be most in favour of those who have most merit: and if there be any difference, those who have contributed to enlarge Britain's empire and commerce, encrease her strength, her wealth, and the numbers of her people, at the risque of their lives and private fortunes, in new and strange countries, methinks, ought rather to expect some preference.

With the greatest respect, and esteem, I have the honour to be,

Your Excellency's

obedient, and

most humble servant,

B. FRANKLIN.

To Governor Shirley,

N° III.

Notæ breviores tangentes statum & gubernationem provinciarum unitarum, sub auspiciis Elizabethæ Reginae.

THE seventeen provinces of the Lowe countreys, which in times past were under severall lords and princes, and so every one of them governed by it self according to the customes and rightes of the same, being most commonlie in quarrell and question with eache other, yea the provinces in themselves, particularly betwene towne and towne, which grew to such factions whereout divisions followed, were at the laste, by alliances, usurpations, conquests and otherwise, brought at laste under one lord and prince, and consequentlie gouverned by suche direction and course as the occasions require.

And the said provinces, having bin thus brought under the house of Bourgoingne, and so continued from the time of the good Ducke Phillip, untell that the present K. Phillip (who, upon the endeavours, by his ministers used, to bring in and establishe the
Spanish

Spanish inquisition and tyrannie, was forsaken and rejected by the said countreys) were governed still according to the use of the said house and court of Bourgoingne, which course of government hath bin observed, notwithstanding the breach between the said king and countreis.

And altho' the generall states, as chief members of the said provinces, and in a sorte deputies of the people and comminaltie, *have used and continued general meetings*, from time to time, to take order for the preservation of the state of thes countreys; yet have they ever found request and needfull, that the state of this government and authoritie therof should be committed *to some few in number, with a head or chief over them*; whertoo a man of calling was thought most convenient.

And, becaus they found none such among themselves, in respect of a kinde of equalitie that both in their state and other states hath ever been, and still is, between men of nobilitie and others equall in degree of calling, though in discent, parentage, living and otherwise different, which causeth contempt by the emulation and jelosie that accompanie greatnes, wherby they are *loathe to yeeld to each other*, and that the provinces, in like
fort

sort affected to themselves, did stand upon tearmes of prerogatives, privileges, &c. yea the particular townes within eache province, wherby inconveniences did diverslie growe daily; the said provinces or states, to provide against the same, and that their state might bee orderlie ruled, did, both before they all joyned and tooke the cause in hand against the said King, yea while they have bin united, and since they were severed, with the aforesaid emulation, jealousie, and other like defects in men, *caused ever seek some* FORREIN PERSONAGE TO BEE THEIR HEAD AND GOVERNOUR; wherof I will sommarelie touch the course. Holland and Zeeland in the first troubles.

Altho' they had the Prince of Orange, one of the wisest, sufficientest and most experimented persons in Europe, confydering all the qualities and rare partes were in him, sent to the Queen's Majestie, offring their state and all unto her; after the losse of Ziriksea, and that the States opposed against the Spaniards, the Archduke Matthias was sought and sent for; the Duke of Alençon succeeded; who being deceased, the King his brother was earnestlee sollicitated to accept the countreys; which sute taking no place, they did again send unto her Majestie, and intreated so fare as it pleased her Highnes to agree

agree unto a certain succour of men, and A CHIEF PERSONNAGE TO COMMAUND; who besides, with th' assistance of a counsell of state, is to deale for the gouvernement of these United Provinces, according to the autoritie by certain points and articles especiallie sett downe in the treatie is appointed, and do in substance comprehend, tho' not so particularly enlarged in woords, the plot of the course and gouvernement aforementioned, used since the said 17 Provinces were reduced under one Prince, which was by a *gouvernour general, and a counsell of state*; who, without partialitie or particuler respect of state, province, towne, or member of the same, proceeded and dealt for the good of the generall, either in time of warre or of peace, in all that concerned the wellfare of the said Provinces.

This waie of gouvernement hath bin also observed and established by provision, during the times *that no forrein chief or governour was agreed withall*, and abod in thes parts, as may appeare by the instructions framed for the counsell of state from time to time, during the life of the late Prince of Orange, and *while his sonne Count Maurice was in place*, and succeeded his father.

Out of all which may bee inferred, and doth

doth necessarily follow, that in all times authority and good gouverment were the principall points to maintein this state; which to confirme the more, it is moſte evident, that, after the arrivall of the Righte Honourable the late deceased Earle of Leiceſter into theſe partes (tho' the treatie gave him ſufficient authority, yea more then hee had otherwiſe, as matters ſucceeded) the ſtates, to the end things mighte be well ordered, and only directed by a generall gouvernour, aſſiſted by the councel of ſtate, made choiſe of his Lordſhip abſolutelie to the ſame, with commaundement to *all particulare gouvernours, and conſequentlie to the Colleges or States of the Provinces, and all others, to reſpect and obey him,* and this to remove the difficulties, and inconveniencies afore touched.

How long the graunt and gift of this ſuperioritie laſted, and upon what occaſion there fell out alteration, were too long to recite; this ſuffiſing, that all men of ſtate and judgement may ſee, *that the popular gouverment being ones in uſe, wherby matters ar directed to that libertie they beſt like of, yt is very hard afterwards to bring them under any other ſort of commaundement;* for finding in any parte their ſaid libertie, or rather that will reſtrained, they did labour by all meanes to reduce things to their owne purpoſe, the

States General reserving, so much as in them is, a kind of superioritie, and so onely to seek to have their owne tournes farvid, and not to be ordered by that kinde of gouverment, that heretofore was used, and yet ought to bee used.

Since the resignation of the said E. of Leicester his gouverment, and that it hath pleased Her Majestie to appoint in his place the moste Ho. the L. Willughbe as L. Generall, and *Lieutenant to her Majestie, wherunto the aforesaide States accepted him*, with shew of great liking, and that thei would yeeld unto and use his Lordship with as much respect as the treatie required and appointed, *they have framed a new forme of gouverment farr contrarie unto the meaning of the said treaty*, and the method used in former times; *seeking more therby to winne time, attending some other accident*, which they will interprett fortunate in their particular respect, more than from anie great good that they can looke for to happen to the cause in general.

Their present state standeth thus for the mennes, for the men of warre, and for the gouverment, as followeth;

The

The Provinces among them do in a manner make acccount, that the contributions to the warres amount to the wonted somme of twentie thousand pounds a moneth, which is devided to be aunswerid by the respective Provinces, according to their quote or rate they are set at.

And of these contributions are paid the martiall men, which are devided upon each province by repartition ; wherein, according to the mennes that each province paieth, they contribute and paie monethly to their garrisons, and the other men that belong to their charge lieng in other places.

Also they do in like sorte paie their gouvernours, sergeant majors of townes, commissaries of musters vittales amunion, and other like officers ; and reserve besides, for other provisions and charges, such money as by the partition and state of warres is sett downe.

These provinces, or rather the deputed states of the same, doo themselves, after 48 daies to the moneth, by their owne officers, paie the souldiers, and others standing on their repartition, reserving in their owne handes the other remaining monie of their quote, to bee paid upon the warrants of the
councill

councell of state ; unto the which they will rest countable of their paiement made to the fouldiers, but therin *their owne discretion and authoritie governes them, as also in paieng of the counsels warrants.*

The number of footemen, presently entertained and standing upon the provinces repartition, is sett downe 15667, and of horsmen neere 905; if the companies were complet, the paiement wherof amounteth for the footemen each moneth unto 119820 florins, and the horsemen to 16880 flo. and are for the present devided thus for the payements.

Holland	8818 footemen,	69086 florins.
Zeland	2910	22233
Utretcht	900	6600
Frise	2800	19933
Geldr.	226	1733
Overifs.	263	2000
Drenth.	150	1133
<hr/>		<hr/>
15667		119820

Holland	615 horsemen	12616 florins.
Twenth	150	2400
Brab	140	1783
<hr/>		<hr/>
905		16,800

There

There are yet the horsemen of the Count Mœurs, those of Wulf, and those of Schenk, being all verie strong troupes with certaine his foote companies, but have no certain paie as yet standing upon the repartition, but after a fort mony prested to them by those of Holland, and so is don to the annuan of Thiel for 300 men, and they of Gertrudenberg paie themselves.

Entertayments paid by the Province.

Holland	8121 florins.
Zeland	2192
Utrecht	1500
Frise	1735
Geldr.	459
Overiss.	306
Drenth.	17

15402 with 400 flor. in the
Rect. gual.

Other extraordinarie charges as for ammunition, vittails, shipping, and such like.

Holland	30148
Zeland	7688
Frise	1800
Utrecht	1000
	<hr/>
	40636

Which paiements, acchounting the particulars to a general, amount unto as in the page following.

Holland	117073 flor.	3 foulds,	4 d.
Zeland	32113	6	8
Utrecht	9100		
Frise	24468	6	8
Brab.	2113	6	8
Guel.	2193		
Overiss.	2306		
Dreuth.	1150	6	8
Twenth.	2400		
Fland.	300		
Upon rect. gual.	411		
	<hr/>		

Som. tot. 193658 10 sh.

And

And yt doth by the aforefaid calculation appeare, that the four contributing provinces do not paie their monethlie rate in the 200000 flo. and yet, unles it be Utrecht, the others are thought to paie it with a furplus.

And it is to bee confidered that, to fhorten the charges, there are no officers for the field in ordinary paie, onely the Marefchall General, the chief of the artillery, with a controuler, and a General des Viures, with a few ordinary officers and conductors.

Alfo they do receave certain extraordinary contributions, as upon falt, foep, &c. wherby they aunfwere at their willes and difcretion the extraordinarie charges that the counfell of ftate or themfelves do make.

The townes and places that muft bee provided with garrifons ar many, as by the note following maie appeare.

In Gelderl.	5	townes,	2	forts	houfen.
In the q. of Zutp	4				3
Overijs.	3		7		
Freefl.	8		16		
Utrecht	5		1		5
Holland	21		10	houfen and 2	
				ilands	forts.
Zeland	6		5		
Brab. and Flan.	3		12		
Under no Prov.	4				
<hr/>					
	59		43	20	2
					ilands.

In which places the above written troupes and companies of horse and footemen are placed, and her Majesties men in Berghen and the two cautionarie townes.

Thus much for the mennes, forts; now to proceed to the use and employment therof, which by the treatie appertaines to the *Lieutenant of her Majestie and the council of state*, with all that belongeth to the goverment of this state.

The Provinces are divided *under certain respective gouvernours*.

The Count Maurice over Holland, and Zeland,

Count

Count Meurs over Guelder, Utrecht, and Overiffel,

And Count William of Nassau, over Friseland;

And each province besides hath his ordinarie meetings of certain counsels, which they terme the Deputed States, and do in that forme meet almost daily in their colladge; wherof the gouvernour, as chief, cometh in when he seeth cause, but hath but a voice; and there they consult of all matters *that concerne their private state, and that thereon dependeth.*

The souldiers, standing in their repartition, *they paie themselves, and by their owne warrants.*

If anie men must be sent unto anie province, must passe thorow it, or that anie be called thence and removed, *that cannot be don but by the gouverneur, and in his absence by the said deputed states of that province,* so that her Majesties lieutenant, and the counsel of state, must direct their letters to that end to the said gouvernour and deputies without anie authoritie to give their owne patents; neither may or can there any souldiers passe through any province, or en-

ter into anie towne, *except they have the private gouvernors patent*; so as the general gouvernor and councells authoritie is therby much impaired; and, if they should have anie enterprife or service in hand, ere they can have anie men, they must make the particular gouvernours and deputed states whence they should be had privie therunto, and so the services ar drawn in length, and often neglected, discovered, and prevented; the said deputies, being divers times of sondrie humours, if they list will suffer no man to bee drawn forth, for making frivolous exceptions.

In like sorte when, upon occasion of the use of any mony for extraordinarie service, the said gouvernour general and councell shall make their warrant upon anie province, it is *in the choice of the same, whether they will aunswere it*; besides that they must most commonlie acquaint them with the cause of employment, and thus are all good services hindred; so that this is one of the greatest wrongs offered in respect of the treatie, *which appointeth that the council and gouvernour general should have the disposition of the monie, for the preservation of the countrey by sea and land*; and as these paiments bee made, which the states are not ashamed to saie, the counsell hath
the

the disposing of, it is a manner of dealing, as if the gouvernour generall and counsell were under age, and in tutely, wherout sondry inconveniences growe amongst other these, that either the men must still abide in their garrisons, and so make no other but a defensive warre, which in time will weary them, hazard the losse of their townes one after another, and consume both theirs and her Majesties mennes and treasure; or els drawing men unto anie service in field, to raise the siege of a place, to make any enterprise or exploit, and that thertoo the men must be had out of several provinces, the paiements must consequentlie bee sent after, which is troublesome and chargeable; the foldiers ar not, neither can be, orderlie paid together, but by fits; so as ever there is dout of disorders, as of late was sene in the siege of Berghen, where the men of Utrecht and Friseland were unpaid, and they of Holland but slenderly.

Another thing is also to bee remembred, that so long as their gouvernements continew in forme aforesaid, her Majesties lieutenant and counsellors shall never be particularly private of the mennes, the forces, the placing or displacing of men, the strength and weaknes of places, the ennemies practises or dealing, which the private provinces

neither yet shall understand anie perfectness of the state, and the proceedings in matters of the same; and when every private province careth for ytsself, disposeth of the mony and men, &c. what needes there any other council or gouvernement?

In like sorte is to bee spoken of the admiral and admiralties, who receive and dispose of all the meanes, make for the shipping, discharge them, and handle all matters belonging to that charge, and neither the gouvernour general, nor counsel, once made privie therunto or respected, so as they know not what cometh in of the convoies, the licences, the prizes, or other advantages, proceeding by the sea, neither yet what strength they are of, or can make, if nede were, to defend these countreys, or assist her Majestie, and what delays and differring is used by these men, hath appeared by their slowness, when the Spanishe armie came towards England, and these countreis, their slacknes in sending over the men and ships for the Portugall voyage, with other like proceedings in occasions dailie falling out.

The inconveniences, that have insewed by this aforesaid kinde of gouvernement, and that dailie yet may growe are divers, besides inserted above.

In

In Holland there are divers divisions between those of the northe and southe part, also the private townes, which in time will breede farther matter, and cannot bee ended without the interposition of some speciall authorite.

The matters of Utrecht depend in fickle termes, and none can take them up and quiet them to the assuring of the state.

Thiel and Bonnuel are not yet reduced to perfect termes with Holland, neither yet with Gelderland, bring in difference under whom they shall resorte.

With the Count of Collemborg, who would hold the towne neuter, is some dispute, the seate of the place being of importance.

The question with colonel Schinck remains yet unended.

Those of Overissel have some hartburning against those of Holland, for keeping of certain forts and strengthes in their province by their garrisons, with obeieng or acknowledging those of Overissel.

The chief officers, captaines, and other
martiall

martiall men grow weary, seing they have no chiefs of acchount and authoritie, and that they are tied to so many obediences by their oathes.

When in garison townes on the frontiers, any companies bee placed, and that they bee of severall provinces, the paiements fall out verie diffused; some paid in time, others staie longer, and others now and then not at all contented, which indaungereth the places, consumeth the magazines, maketh hartburnings and divisions.

In Freeland there remaineth still some controverſie, and ſo in other places; and the ending of all theſe dependeth, by vertew of the treaty, upon the gouernour general and the counſel of ſtate, the which, if her Maieſtie pleaſe not to reſtore to the authoritie dew unto them, but ſuffer this aforeſaid kinde of popular gouernment to proceed, ſhee ſhal be ſure to waſte her treaſure, to ſee her ſubjects daily ſpent in garison townes, without anie further experience of warres then that ſervice will yeeld, to deminiſhe the honor and reputation of the gouernour, the officers and nation; and at length have much adoo to recover her owne, when by this langueshing warre all will come at length to ſome incertain ſucceſſe; whereas other-
wiſe,

wife, the aforesaid authoritie being establisht, the meanes and men might bee employed in service abroad, especially when the ennemy is thus quiet and in a traunce, not knowing what course to take, wherby would be gotten great advantage upon him in divers quarters, as in Brabant, Flanders, towards the Velen, the Twenth, the Drenth, the Ommelands, Groenighen, and other parts; wherby the inhabitants there would bee driven to abandon and forsake the places, or els yeald to this side, and forsake the ennemy; and besides might worke some division amongst the malcontents, who by report are distated of the Spaniards and Italians.

And if this proceed not by some meanes from her Majestie, these men will not stirr; for they acchount not so much of their neyhbours, as to help them, wishing rather the continuance of their troubles and misery, and themselves alone to keep all trade and traffique as they now enjoye; and thus a fewe to serve their private tours, esteeme not, neither care for the generall.

Wherefore, seing her Majestie hath in some sorte taken the cause of these afflicted countreys in hand, if she may please to continew, and to wait that aforesaid, with such benigne clemencie and gracious judgement, as
the

the same requires, to remove all the passed faults and errors, and set all in better order in time to come, *unlesse her Highnes shall think good to enter furder into the action, and take the souverainetie or perpetuall protection of these countries, which all good people wishe and hartele desire*; the best waie would be to deale roundlie and require the establishment of the gouvernour generall and the counsell of state in their autoritie, with such a gouvernement as the treatie requireth, and that her Highnes declare her interpretation thereof to bee according to that, which by the lieutenant and counsellors hath bin by writing exhibited unto the State Generall.

And to the end they may perceave her Majesties meaning is to maintaine the treatie in like sorte on her side, it shal be necessarie, before all, that the said L. General's autoritie, according to that apperteineth to his place, bee established, and order given that the points of the treatie, concerning his charge over her Majestie's forces, bee fulfilled, and consequently to begin, to take awaie all occasion of the states complaints, to have the companies made complete: to give order, that the musters may be made orderlie and with assistance of their commissaries: that the men may be duly paid,

so

so as they charge not the country with prefts: that the full disposing of the warrants, the placing and displacing of the capitaines, bee left and committed to the L. General: that all captaines do keepe and abide by their companies, or els to quitt them, and suffer the L. Generall to place others; and lastlie, that no companies bee suffered to bee sold, nor obtained with favour, without just desert and worthie for hableness and experience of the charge; with other like faultes, which in reason ought to bee redressed and provided against.

And these states seing that her Majestie's order and direction is to have a better order and direction in all things established, will undoutedlie frame themselves accordinglie; *and then maie this state bee governed according to auntient order and custome*, concurring with the trew meaning of the treatie; the good frutes wherof will evidentlie appeare, assuring this state within yt self by the dew autoritie to bee exercised in their government, *and assure yt more firme unto her Majestie by the good and mutuall correspondence to bee used and entertained*; and so shall at all times the force and proceedings of these united provinces bee knownen to her majestie; according to the which all things for the good and more securitie of
her

her Highnes one state and countrey may bee directed.

It may likewise be added hereunto, that the autoritie of the lieutenant general and counsell of state, being established as above written, for the dew gouverment of the provinces, the assemblies of the generall states wil be lesse needfull; who in former times never medled further then with the graunting of any contribution, to bee required by those that gouverned, and knew the need and necessite of the state; and now in their assemblies deale in all things both for warre and pollicie, taking upon them as absolute gouvernours and souverains, so that the counsell of state do not any thing of anie importance without the communicating of it with the said states; who then, though nothing belonging to their charg, take order and determine all to their pleasure; so that the counsell of state serve but for a cypher; and it were more fit and convenient that her Majesties lieutenant and counsellors should meet in their assemblies, where all is knowen and handled concerning the gouverment of the provinces; then in the said council which hath but the name:

To enter into the particularities would bee too long, and I will conclude with the
 4 persons,

persons, whereof these general states of all the provinces are formed and consist at this present, of some 14 persons; amongst the which are some 3 or 4 gentlemen, the rest pensionaries and marchants, and whatsoever they saie the other yeeld therunto, and so keep and continew their course in gouverment, dispatching littel or nothing, if they of Holland come not; who have bin of late so buised in their private meetings, that their deputies appear seldom or very litell; wherby all matters are handled at length and with delaie.

The rest that thereon dependeth, and of the humours of these general states, and what and how some provinces beare swaie above others, I leave to the report of such as have frequented these countreys, and are acquainted with the state and order therof, ending thus this brief sommarie discourse upon the state and gouverment, which I have set down in haste for want of sufficient time to doo yt more exactlie; the matter being trew, howsoever the course is observed in writing.

Hagb, twentie eighth daie of
February, 1589.

N^o IV.

*Plan of an union of the several Colonies of Massachusetts Bay, New Hampshire, Connecticut, Rhode Island, New York, New Jerseys, Pennsylvania, Maryland, Virginia, North Carolina, and South Carolina, for their mutual defence and security, and for extending the British Settlements in North America; as proposed by * Benjamin Franklyn, Esq; and unanimously agreed by all the Commissioners of the several Colonies aforesaid, met, by order of the Crown, in Congress at Albany in July, 1754.*

IT is proposed that humble application be made for an act of parliament of Great Britain, by virtue of which one general government may be formed in America, including all the said Colonies; within and under which government each Colony may retain its present constitution, except in the particulars wherein a change may be directed by the said act, as hereafter follows.

President
general and
grand council.

That the said general government be administered by a president general, to be appointed and supported by the crown, and a

* N. B. Benjamin Franklyn was one of the Commissioners of Pennsylvania, and Mr. since Governor Hutchinson, for Massachusetts-Bay.

grand

grand council to be chosen by the representatives of the people of the several Colonies, met in their respective assemblies.

That within months after the passing of such act, the House of Representatives, in the several assemblies that happen to be sitting within that time, or that shall be specially for that purpose convened, may and shall choose members for the grand council, in the following proportion; that is to say,

Massachusetts Bay	—	—	7
New Hampshire	—	—	2
Connecticut	—	—	5
Rhode Island	—	—	2
New York	—	—	4
New Jerseys	—	—	3
Pensylvania	—	—	6
Maryland	—	—	4
Virginia	—	—	7
North Carolina	—	—	4
South Carolina	—	—	4
			—
			48

Who shall meet, for the first time, at the city of Philadelphia in Pensylvania, being called by the president general, as soon as conveniently may be, after his appointment.

That there shall be a new election of members

members for the grand council every three years; and on the death or resignation of any member, his place shall be supplied by a new choice, at the next sitting of the assembly of the Colony he represented.

Proportion
of members
after first
three years.

That after the first three years, when the proportion of money arising out of each Colony, to the general treasury, can be known, the number of members to be chosen for each Colony shall, from time to time, in all ensuing elections, be regulated by that proportion, [yet so as that the number to be chosen by any one province, be not more than seven, nor less than two.]

Meetings of
grand council,
and call.

That the grand council shall meet once in every year, and oftener if occasion require, at such time and place as they shall adjourn to at the last preceding meeting, or as they shall be called to meet at, by the president general, on any emergency; he having first obtained in writing, the consent of seven of the members to such call, and sent due and timely notice to the whole.

Continu-
ance.

That the grand council have power to choose their speaker, and shall neither be dissolved, prorogued, nor continued sitting longer than six weeks at one time, without their own consent, or the special command of the crown.

That

That the members of the grand council shall be allowed for their service, ten shillings sterling, *per diem*, during their sessions and journey to and from the place of meeting; twenty miles to be reckoned a day's journey.

Members
allowance.

That the assent of the president general be requisite to all acts of the grand council, and that it be his office and duty to cause them to be carried into execution.

Assent of
president
general, and
his duty.

That the president general, with the advice of the grand council, hold or direct all Indian treaties, in which the general interest or welfare of the Colonies may be concerned; and make peace or declare war with Indian nations. That they make such laws as they judge necessary, for regulating all Indian trade. That they make all purchases from Indians for the crown of lands now not within the bounds of particular Colonies, or that shall not be within their bounds, *when some of them are reduced to more convenient dimensions.*

Power of
president
general, and
council.

Treaties of
peace and
war.

Indian trade.

Indian pur-
chases.

That they make new settlements on such purchases, by granting lands in the king's name, reserving a quit rent to the crown for the use of the general treasury.

New settle-
ments.

Laws to govern them.

That they make laws for regulating and governing such new settlements, till the crown shall think fit to form them into particular governments.

Raise soldiers and equip vessels.

That they raise and pay soldiers, and build forts for the defence of any of the Colonies, and equip vessels of force to guard the coasts and protect the trade on the ocean *, *lakes*,

Not impress

or great rivers. But they shall not impress men in any Colony without the consent of the legislature of that Colony.

Power to make laws, lay duties, &c.

That for these purposes they have power to make laws, and lay and levy such general duties, imposts, or taxes as to them shall appear most equal and just, considering the ability and other circumstances of the inhabitants in the several Colonies, and such as may be collected with the least inconvenience to the people; rather discouraging luxury, than loading industry with unnecessary burthens.

Gen. treasurer and particular treasurer.

That they may appoint a general treasurer and a particular treasurer in each government, when necessary, and from time to time may order the sums in the treasuries of

* According to a plan which had been proposed by Governor Pownall, and approved of by the Congress. Vide Appendix to Vol. I. Section. I.

each government into the general treasury, or draw on them for special payments, as they find most convenient: yet no money to issue but by joint order of the president general and grand council, except where sums have been appropriated to particular purposes, and the president general is previously empowered by an act to draw for such sums. Money how to issue.

That the general accounts shall be yearly settled, and reported to the several assemblies. Accounts.

That a quorum of the grand council, empowered to act with the president general, do consist of twenty-five members, among whom there shall be one or more from a majority of the Colonies. Quorum.

That the laws made by them for the purposes aforesaid shall not be repugnant, but as near as may be agreeable, to the laws of England, and shall be transmitted to the king in council for approbation as soon as may be after their passing; and if not disapproved within three years after presentation, to remain in force. Laws to be transmitted.

That in case of the death of the president general, the speaker of the grand council for the time being, shall succeed and be vested Death of the president general.

vested with the same powers and authorities, to continue till the King's pleasure be known.

Officers
how ap-
pointed.

That all military commission officers, whether for land or sea service, to act under this general constitution, shall be nominated by the president general; but the approbation of the grand council is to be obtained before they receive their commissions. And all civil officers are to be nominated by the grand council, and to receive the president general's approbation before they officiate: But in case of vacancy by death or removal of any officer, civil or military, under this constitution, the governor of the province in which such vacancy happens, may appoint, till the pleasure of the president general and grand council can be known.

Vacancies
how sup-
plied.

Each Colo-
ny may de-
fend itself
on emer-
gency, &c.

That the particular military, as well as civil establishments in each Colony, remain in their present state, this general constitution notwithstanding; and that on sudden emergencies any Colony may defend itself, and lay the accounts of expence thence arising before the president general and grand council, who may allow and order payment of the same, as far as they judge such accounts just and reasonable.

M E M O R I A L.

Observations on a line of demarkation between the English and French in North America, so far as it respects that continent only.

IF the English policy does not extend to the obtaining and preserving the intire possession of Canada and Louisiana, 'twill consider by what line it shall circumscribe it in those parts.

Under this head it will be previously necessary, that the French fix precisely what are the boundaries between Louisiana and Canada, which they divided about the year 1752.

And next, as the possession of the Indian alliance is of the utmost consequence—it should be precisely determined what are the possessions and rights of the nations and tribes in alliance with the English; and such by actual description put under the British protection: For by mistaking this point, we may, as has been done, bottom our cause on a foundation which cannot support itself, and neglect one that perhaps promises less, but must really support it.

If the waters of the lakes, of St. Lawrence and Mississippi rivers, are to be the bounds between the British and the French rights; 'twill be of consequence, in a very precise and determinate manner to specify what is meant by such: For the French pretend to claim no other; but by that claim extend their pretensions to the head of every water which runs into either of these; and by that pretence claim all the north and north-west of Nova Scotia and New England, Lake George and Wood Creek, the carrying-place at the head of the Mohawks river, all the Ohio, Cherokee, and other rivers which on the back of the Carolinas run into the Mississippi, 'Tis therefore needless here to say, that the enemy must be bounded by some determinate *line of demarkation*.

Wherever and howsoever such shall be fixed, such line will consist of four different parts, the rights of which are founded each on very different, and the interest and policy of which must depend on very different reasonings.

As this method of considering the line of the British empire in America is absolutely necessary to a just idea whereon to treat about it, this paper presumes to point out *the parts* of said line, and to suggest some observations on the *principle* on which each part is founded.

I. The

I. The first part consists of the British rights in Hudson's bay, and the Labradore coast on the Atlantic.

And here, supposing the British rights to be settled and undisturbed in Hudson's bay, it may be of use to stipulate some acts of trade; that, while the company purchase the French furs, the French may not be enabled to supply their Indian stores with English European goods, on Lake Superior, &c. without which it would be difficult for them to maintain their Indian alliances with the Assenipoels, Algonkins, Otawawaes, &c. in those parts: if therefore an English store, to be supplied with the company's goods, was by way of cession fixed on Lake Superior, or river Michipocoton, (where now, as is said, the French have a store) it would have a proper effect to maintain a ballance in the Indian interest, and might lead, according to French policy, to much higher purposes. But though this be a matter more to be wished, than likely to be obtained and effected, yet it may not have been improper to have suggested it.

2. As the enemy obtained of Britain a right to fish, and cure their fish on the north parts of Newfoundland, as a cession of no consequence to the English; so will they, no doubt, endeavour at some such acquisition, by
concession

concession of a right to do the same on the Labradore coast. They know the worth of this; they know the fishery continues to lessen on the banks and to the southward; they know the best and most plentiful is to the northward, and will hope, from our inexperience of this truth, to keep still to the northward of us. The Labradore coast as much exceeds the north of Newfoundland, as that does the southward part, for plenty of fish. This coast is not that inhospitable, inaccessible land of terrors that it has been represented; the climate, like all others uncleared of its wood and uncultivated, has its extremes; but is at the same time the most delightful in its mean that can be conceived. It not only abounds with the finest harbours, but, like all the eastern shore of the north part of North America, is so hemm'd in with islands, that vessels may sail within such the whole length of it, as within a harbour; where there is an inexhaustible source of fish and peltry, and they add also of naval stores, but this not certain. The chart sent herewith, done by, and from the observations of an adventurer from Boston, will give an idea of it.

II. The next part of the line is that which must divide New England and Nova Scotia from Canada. And although there can be no doubt of the British right extending up to the
river

river St. Lawrence, yet possibly the following observation may not be altogether useless, in case the intire possession of such right may be in some measure receded from.

A river, and all the navigable waters which communicate with it, if possessed by people the least conversant in commerce, become, by a consequential intercommunion, the *natural basis of a one interest*; and as the two sides of such a river cannot, in the nature of things, be divided into two interests; so it may be seen that a river was never yet a boundary between two commercial nations, nor never could be. 'Tis therefore so far from being a natural boundary to such, that it is the most unnatural boundary that can be devised, and the most impracticable to attempt to divide two nations in that very point where they are the most intimately connected. Let politics endeavour to divide the two sides of such a river between two people, yet they will live under and in one and the same interest; and consequently, whichever side is the predominant interest, that will lead and govern the other also. The river St. Laurence being the very seat of the French settlements, and so far remote from and unconnected with those of the present English ones; the British subjects living on St. Laurence river, (should any ever settle there,

there, and on the navigable waters that communicate with it) will, so long as the French interest predominates there, be bad subjects to the British crown; which disaffection and disadvantage will extend itself into New England and Nova Scotia, as far as the intercommunion of these borderers extends. Moreover, when there is a natural boundary, the benefit and use of the protection of their own government is neither felt, sought for, nor depended on by the borderers.—On the contrary, if any artificial boundary be all that divides the two governments, the state of the borderers, in that case, creates in them a natural jealousy and animosity against each other; and as there is no defence in the natural state of the boundary, all the defence and support of their interest, that they hope for, or depend on, is in the protection of the government; and consequently borderers, in such case, are always the best affected, and most beneficial subjects; and possibly the policy of this principle may be better applied to the borders of dependent provinces and Colonies, than to any other members of a government.

There is indeed one very essential objection to this idea of the line; which is, That if any part of the continent on this side the waters be divided between the British and French, the French, by the ascendancy which

which they have gained over the Indians, will draw the Indians to live on their part, and have them always ready to pour down upon us, as a continual check and scourge : but possibly, some such stipulation as follows being demanded, might not only put an effectual stop to such proceedings, but obviate, with great propriety, such objections as will be pressed upon us, on account of seizing the French vessels prior to the declaration of war ; namely, That the French shall be answerable for their Indian allies, which dwell on their lands ; and that if any Indian nation or tribe, ally to the French, (as they can be fitted out by none but the French) shall commit hostilities against any of the English Colonies ; vessels with letters of marque and reprisal, shall be justified in making reprisals on the vessels and trade belonging to the subjects of the French Colonies ; and *vice versa*.

III. The next part of said line, is that which must divide New York and Pennsylvania, with the British Indian allies, from Canada and the upper part of Louisiana.

The rights and policy of this line is so connected with the rights of the Five Nations, and our alliance with them, (which has been explained in the Considerations of
 2 the

the state of the service in 1755, already presented, and in a paper stating the nature of the British Indian claim, presented in 1757) that it were needless to repeat such at this time, especially as the reasonings on that head must much exceed the bounds of this paper.

IV. The fourth part of the line of demarkation may, from the reasoning above, be supposed to begin sixty miles due south from Canahoga, alias Canaoaga, and extends to Florida.

The papers above referred to, afford many and very particular observations, from the reasonings of the French government and ministry, as to the posts and passes in said tract, to which this paper would, on this head, refer itself: But if the main channel of the river Mississippi is not to be the proper line required—in this place occurs the enquiry, Whether there be in the nature of the country, any thing which, forming two different interests, may become the dividing line natural to such. If on any navigable river there be such falls as *divide and absolutely disjoin the marine navigation from the Inland or Mediterranean navigation*, the intercommunion or interest of those two become different; divided each, and each bounded by said falls: as this division of marine
and

and inland navigation, on such interrupted waters is a real existing fact, not only in America, but in every part of the world where the same circumstances are found, it were needless further to explain the reason. If therefore the English cannot expect to share the marine navigation of Mississippi with the French; and the marine navigation of the French is cut off by the falls from the inland navigation; it appears, that these two interests are divided naturally by a line drawn across the falls of the several rivers which run into the Mississippi: and if the settlements of the English be found in the one region, and those of the French on the other; this line will naturally, and therefore permanently, divide the interest of these two nations, and so be the best line of peace: and as such line may be a natural division to their interests in these parts; so the several falls on said rivers may prove to be the properest posts for the artificial line of defence. Let it be supposed, as an example only of this reasoning, (for this paper does not presume to point out the specific line) that a line run from Canahôga on lake Erie, by the falls of the Onäback, Ohio, Cherokee rivers, &c. and so directly to the north-west corner of the Spanish rights of Pensacola, with forts at proper posts thereon; and there will be presented an idea of the sort of line here meant.

The

The reason of beginning this line at Canahôga, depends on the reasonings in the papers above referred to, on the third article.

By the uniting the English line with that of the Spaniard, any French encroachments may lead to the uniting those nations in repelling such, as a common cause; or at least make them reciprocally guaranty for the preservation of it.

This paper does not enter into particular descriptions of cases, nor reasonings of the effects of such line of demarkation; but confines itself solely to the *principles* on which the proposals are suggested.

N. B. The same principles may be referred to the line between New England, Nova Scotia, and Canada.

T. POWNALL.

Boston, Oct. 22d.

1759.

ADDITION

ADDITION to SECTION I.
Of the APPENDIX to the FIRST VOLUME.

* *CONSIDERATIONS towards a General Plan
of Measures for the English Provinces
in America.*

THE plan of the French measures in building a line of forts round the English settlements, is :

1st. To cut the English off from all communication of alliance or trade with the Indians.

“ The reason of building the fort Cadta-
“ raqui.

“ They found it necessary to build this
“ fort for a bulwark against the incursions
“ of the Iroquois, and to interrupt the
“ trade of skins that these savages maintain

* This memorial was laid before the commissioners of the several provinces met in congress at Albany, in 1754, and was adopted by them. I received by a committee their thanks, and a desire that I would suffer copies to be taken by the commissioners of each Colony, for the consideration of their respective governments. This memorial was sent to England with the rest of the papers of the congress; and the measure was immediately adopted by government, and ordered accordingly to be carried into execution in 1755; and became in its effect a decisive stroke.

“ with the inhabitants of New York, and
 “ the Hollanders, who have found a new
 “ Colony there, for they furnish the savages
 “ with commodities at cheaper rates than
 “ the French of Canada.”—Father Hene-
 pin, chap. 4.

“ The scheme and design of building
 “ the fort at Niagara. Such a fort as this
 “ might easily interrupt the commerce be-
 “ twixt these people and the English and
 “ Dutch in New York. Their custom is,
 “ to carry to New York the skins of elks,
 “ beavers, and several sorts of beasts, which
 “ they hunt and seek after, for two or three
 “ hundred leagues from their own home.
 “ Now, they being obliged to pass and re-
 “ pass near the mouth of the river Niagara,
 “ we might easily stop them by fair means
 “ in time of peace, or by open force in time
 “ of war, and thus oblige them to turn
 “ their commerce on Canada.”—Chap. 7.

The design of building the fort Canani-
 stigoyan, on the Lake Superior.

“ 'Tis some years since Mr. Dulkut
 “ built a fort upon this Lake, where he had
 “ large magazines of all sorts of goods.
 “ That fort was called Cananistigoyan, and
 “ did considerable disservice to the English
 “ settlements in Hudson's Bay.”

2dly. To make a line of circumvallation, to confine the English settlements within such bounds as the French are pleased to thus set to, the English provinces.

Many proofs might be alledged on this head, but the following is more than sufficient.

The summons of surrender sent by the French officer to the English officer, at the forks of Monongahela.

3dly. To join Louisiana and Canada, to become masters of the Lakes, and make the whole Continent ONE FRENCH KINGDOM.

“ I plainly perceived by what relations I had
“ of several particulars in different nations,
“ that it was not a matter of great difficulty
“ to make a considerable establishment to
“ the south-east of the Great Lakes; and
“ that by the conveniency of a great river
“ called Ohio, which passes through the
“ country of the Iroquois, a passage might
“ be made into the great sea at Cape Florida.”—Father Henepin, chap. 4.

*Chaarlevoix's Journal Historie, Nov. 8th, 1721,
vol. 6. pag. 157.*

Il n'est point dans toute la Louysiane, de lieu
m 2 plus

plus propre pour un etablissement, que celui-la [*viz.* riviere Ohio,] ni où il importe davantage d'en avoir un. — D'ailleurs, la communication avec le Canada, n'y est pas moins facile que par la riviere des Illinois, & le chemin est beaucoup plus court.

“ The Lake Ontario, or Frontenac, is easily navigable, and that with great vessels.”—Father Henepin, chap. 6.

“ It were easy to build on the sides of these Lakes, an infinite number of considerable towns, which might have communication one with another by navigation, for five hundred leagues together, and by inconceivable commerce, which would establish itself amongst them.”—Chap. 11.

In 1678, the French had a brigantine of ten tons on the Lake Ontario.—Chap. 14.

In 1679, a ship of 60 tons on Lake Erie.—Chap. 19.

The whole back country which they divide into Canada and Louifiania, they call New France.

THE ENGLISH MEASURES THEREFORE SHOULD BE,

I. To open themselves a passage to, and a communication with, the Indians.

II. To disjoin and keep separate Louisiana and Canada.

III. To throw off this yoke of forts, which the French are laying on their necks.

The only way for the English to do this, is to become masters of the Indian countries, so as to secure themselves, and to protect the Indians. Then, and then only, would the English have a real, an actual interest and alliance with the Indians.

There appears two ways of effecting this.

Either to dispute with force and arms, every pass and hold in the country with the French, and to secure such with forts and garrisons ; or to become masters of the Lakes, and to acquire the dominion of that navigation.

The first considered.

The French government in Canada, is a military united power ; is calculated for military adventures ; is founded and actually settled in such adventures ; does not consist of

farms and settlements of farmers, but of forts and settlements of soldiers ; is actually possessed of such passes and holds, and has secured them by forts. The undertaking such military adventures, and building and garrisoning such forts, is actually but carrying on the ordinary method and regular plan of settling their Colonies, for which both the people and government of Canada is formed. Whereas the English provinces consist of farms and farmers, and settlements of labouring, not of fighting men, who live and maintain their families by the culture of their respective settlements ; cannot therefore be draughted out, and employed in military adventures, without ruining them and their families, and their settlements. Men cannot settle and fight too. They could fight as well as the French, but then must give over settling. They make the best settlements in the world, but then this fixes the necessity of their labouring on a particular spot ; whereas military adventures require them to be unsettled, ready to march, and be employed at any place, at any time. As thus the English provinces are not in their constitutions, so neither are they in their government, formed for military service: **THEY HAVE NO MILITARY ESTABLISHMENT,** no part of them selected, trained and kept a constant standing force (as the French have) for this service alone : The French therefore
always

always will be, as they have hitherto been, masters in the field. They will beat us at the dispute of every pass, were they even to set out with us at this moment. What they have they can keep ; what we had, they have taken part from us, and can take the rest when they will. But as they are now situated, have forts and garrisons in almost every pass of the country, they can, at a moment's warning, draw together an army, well served with artillery, in any part of the Back Continent ; while the English, if they could raise one in a year or two's time, could not march it (as they are now circumstanced) to any place where it was wanted, while the necessity of the service continued. The measure therefore most reasonable and most likely to succeed, is, *to set the first step* where we have already a *footing*. We have in the Indian country, a fort, a garrison, A PORT ; under the defence of this, THE ENGLISH MAY BUILD A FLEET that shall,

First, Open a passage and communication to the Indians :

Second, That may establish a trade of the most easy management, and the greatest profit :

Third, That would divide and cut off Louisiana from Canada.

1. This

1. This is a pass the French are not possessed of; a pass that all the forts they have built are of no use to the defence of; a pass that the English, in their own way, in which they have always been superior to the French, could dispute with the French, and beat them out of; a pass where our proper force could be united, and where no artifice of the French could divide and dissipate it, &c. &c.

2. The navigation of the Lakes would establish a mart where the Indians of every nation would resort.

“ In summer time, several northern nations come to hunt and fish in these parts
“ [he here speaks of the Lake Superior] and
“ bring with them the beaver skins they
“ have got in the winter, in order to truck
“ with the Coureurs de Bois, who do not
“ fail to meet them there every year.”

Labontain's Memoirs of North America, pag. 214.

If the trade of the Hudson's Bay company, which is, as it were, only in the skirts of the great Continent, is found so beneficial, what might not this be, that is in the very heart of it?

The back settlements will, in time, want a vent for their produce.

This

This trade would open to them such a vent.

1st and 2^d. Being masters of this pass, and this trade, would give the English the command of the Indian country, and consequently of the Indians, which is the only way to preserve their fidelity and alliance: 'tis the only way to enable them to continue our friends.

The example of the navigation and trade of the Caspian Lake, may not only be a rule of experience, but is also a most encouraging example.

Many other reasons for; and consequences of, this measure might be offered; but this paper does not mean to give reasons, but to propose considerations.

3. If the English were masters of the Lakes, and had consequently the friendship of the Indians, the French could have little or no communication between Louisiana and Canada; and no communication, no effectual one, with most of the forts they have built up and down the country, &c. &c.

Upon the whole, this measure is adapted to the nature of the strength of the provinces

ces who are maritime, and numbers of whose people are mariners ; take into this denomination boatmen, and perhaps one-third or a quarter at least, may be such.

The navigation of the sea and rivers on one side, and of the lakes on the other, would form these PROVINCES INTO A KINGDOM, equal, if not superior, to the kingdoms of New France.

All that can be done at present, is, under the defence of Fort Oswego, to secure the dominion of the Lake Ontario : and in the mean while, to secure by forts, the passes upon the frontiers of our own settlements, (distinguish here the frontiers of the settlements from the frontiers of the provinces) and those of our allies, to protect ourselves and them.

This being done, we should attempt and acquire (for it is in our power) the dominion of all the Lakes, (perhaps the Lake Superior excepted.) New Hampshire, Massachusetts, and Rhode Island, might be allotted to Lake Champlain ; Connecticut, New York and New Jersey, to Lake Ontario ; Pennsylvania, Maryland, Virginia, and perhaps the Carolinas too, to the Lakes Erie, Illinois, &c.

“ If

“ If the English would pursue their
“ measures to the best advantage, they
“ ought to engage the Isonontowanes, [the
“ Senekas,] or the Goyogowanes, [Cayuga,]
“ to go and settle upon the banks of the
“ Lake Erie, the mouth of the river Conde;
“ and at the same time, they ought to build
“ a fort there, with some long barques and
“ brigantines; for this is the most conve-
“ nient and advantageous post of all that
“ country, and that for an infinity of rea-
“ sons, which I am obliged to conceal.

“ Besides this fort, they should build
“ another at the mouth of the river De
“ François, and then it would be absolutely
“ impossible for the Coureurs de Bois, to
“ reach the Lakes.”

La Hontain, page 273.

Albany,
June 1754.

T. POWNALL.

F I N I S.

" If the English would give their
" menaces to the 1st advantage, they
" ought to engage the Indians [the
" Senecas] or the Cayugas, [the
" to go and settle upon the banks of the
" Lake, near the mouth of the river, and
" and at the same time, they ought to build
" a fort there, with some long pieces and
" batteries; for this is the true
" and the most advantageous post of all that
" country, and that for an infinity of rea-
" sons, which I am obliged to conceal.

" Besides this, the French should
" employ all the force of the
" French, and the Indians, to
" impose upon the English, and
" maintain the same.



T. FOWNALE

Albany
Jan. 1754

W. I. N. I. S.

